New Directions for Practical Legal Training in British Columbia

A report to the Law Society of British Columbia
and the Continuing Legal Education Society of British Columbia
to assist the Re-Visioning of the Professional Legal Training Course

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Table of contents

Abbreviations and synonyms

Call	the process of being called as a barrister and admitted as a solicitor
CLE	continuing legal education
CLES	Continuing Legal Education Society of B.C.
Content document	*The Content of Professional Legal Training*, Law Society document, 1998
Law Society	Law Society of British Columbia
LL.B.	Bachelor of Laws degree
PLT	practical legal training, or professional legal training
PLTC	Professional Legal Training Course
Requirements document	*Requirements for Newly Called Lawyers*, Law Society consultation paper, January 1996
Statements document	*Statement of Pre-Call Requirements*, Law Society document, October 1996
University of British Columbia	UBC
University of Victoria	UVic

Executive summary & recommendations

Executive summary

Note: the recommendations interspersed throughout this Executive Summary are collected together immediately after it into sections *Policy Recommendations* and *Operational Recommendations*.

British Columbia has a well-respected and smoothly conducted course of pre-call training, known as the Professional Legal Training Course (PLTC). The course is very successful in achieving what it sets out to do.

But now it is time to review it. Times have changed since it adopted its present approach and format, over ten years ago. The environment in which the law is practised has changed, the way in which law is practised is changing, and a new generation of ideas about skills training and approaches to lawyering has arisen.

Like every profession or industry offering services to the community, the legal profession cannot run the risk of resting on its laurels so far as the quality of the service it offers is concerned. Quality control begins at the entry gate and so, naturally, the training for those about to enter the profession must be put under scrutiny; regularly and critically. Professional training must not be just good enough – free from persistent criticism – it must be outstanding, if the legal profession in British Columbia is to continue to play a dominant and central role in the social and economic life of the Province.

This review is the beginning of what should be a redesign process, to occur over the next year.

Fundamental purpose

A re-visioning upon which to base new directions for the PLTC must begin with the fundamental question of what the PLTC is for. In response to this question, the PLTC should be placed in the context of the process of preparation for practice (the Articling Year), and it also should be part of the continuum of education and training, which continues on past the PLTC into all of a lawyer's professional life. The purpose and content of the PLTC can be found within these larger contexts.

My recommendation is that the fundamental purpose of the PLTC be:

- *Together with the other elements of the Articling Year, to equip law graduates seeking Call with some further legal knowledge, together with a range of lawyering and law practice skills and the professional attitude, required to perform the legal functions required for general law practice in British Columbia.*
- *On completion of the PLTC, students should be able, at a level of competence appropriate for an articling student, to perform, with a professional attitude, a limited range of lawyering work in a manner which effectively achieves the client's and lawyer's objectives.*

A key word in this recommended purpose is "lawyering," a theme which will recur in this report.

The Articling Year

This recommendation reflects a suggested re-emphasis on the whole Articling Year, of which the PLTC forms a part. The Law Society has prescribed in a report, *The Content of Professional Legal Training*, the content of professional legal training. I recommend that this report be reviewed and amended with a view to it being, in fact, the prescription for the content of the whole of the Articling Year.

The Articling Year has three components which, together, ensure that applicants are ready to be called — the testing of sufficient legal knowledge, practical training and practical experience.

Sufficient legal knowledge for Call

The primary method of determination of sufficient legal knowledge should continue to be by examination. The question is what the purpose of that examination should be and what it should test. The answers to these questions will indicate whether the examination should be an entrance examination, *ie* undertaken before the PLTC, or at some other time in the Articling Year. Whatever the decision may be, I recommend that there should not be Qualification Examinations at the end of the PLTC, as at present.

As the possibility of an entrance examination is currently "on the agenda" of the Law Society, various issues related to such an examination must be considered. They suggest that, whilst the concept of an entrance examination is attractive, such a development could nonetheless fail, not for its inherent value but because of intervening factors which the change of arrangements would throw into sharp relief. An example is the difficulty applicants might have in preparing for the examination.

Articles

Articles themselves should be seen as an equally important element of the Articling Year, although I do not make any recommendations as to their improvement.

Lawyering: a unifying theme

The course would benefit from being built around a common and unifying theme. Although it may seem self-evident, I suggest that this theme should be lawyering, and so the course should be a "lawyering course" – *ie* a course bringing together *all* the elements which make up the process of doing the work of a lawyer: knowledge, skills and attitudes.

This approach avoids having to categorize the course as either a skills course or a transactions-based course. This approach would make the course distinctive in the international context.

The model upon which such a course should be based, and thus suggesting its content and structure, should be the fundamental lawyering functions of:

- gathering and analyzing facts
- identifying problems or legal issues
- researching and analyzing the law
- applying the law to problems

- considering different solutions
- developing and implementing plans, and
- presenting results.

This central and unifying theme will need further development as its implications are worked out in curriculum design and in implementation.

Modularization

The course should be modularized such that it comprises two major modules. A division into the two major areas of Solicitors' Work and Barristers' Work is an appropriate and useful categorization on which to base this modularization. Each module would be subdivided into two submodules, such that each of the four submodules would be just over two weeks in length: a manageable size.

The overall effect of this modularization would be that a student could have a choice of completing the whole course in one ten-week session, as at present, or could choose to spread the course over all or part of the Articling Year.

Skills

Lawyering skills dealt with in the course should be the same as those already chosen for the course. However, research should be more explicitly incorporated into the program, including the Final Assessment. There should be greater emphasis on computer-based research, and students should be enabled to undertake such research.

Law practice skills

Only law practice skills relating to the management of clients and self should form part of the curriculum of the PLTC. Those relating to law offices and law firm finances (as set out in the *Content* document) should be dealt with after Call and in the context of the Professional Triennium (see below).

An instructor should be given specific responsibility for the law practice skills relating to management of clients and self. The instructor with that responsibility would be given the task of designing law practice management components which would be slotted into the course at appropriate places. Each component would both neatly integrate into the section of the course in which it was placed, and would also be part of a whole program of learning in law practice management spread over the whole course – and indeed continuing on beyond.

Greater emphasis on law practice management can be achieved by explicitly seeking to integrate, as far as possible, a law practice management element into as many aspects of the work students do.

Content of the course

The content of the course has remained largely unchanged for at least ten years. It is time for it to be very thoroughly reviewed, in order that every minute of what is, after all, a quite short course is used to maximum advantage. Where possible, individual areas should be integrated into transactions to see them in context.

Professional attitude

Professional attitude should be made a section in its own right in all skills assessments, and some (but not necessarily all) fact patterns should have an ethical issue built in. The Final Assessment (see below) should include an ethical issue to be resolved. Sensitivity to, and ability to deal with, cross-cultural issues should be a hallmark of the course.

Teaching methods

The course uses a variety of teaching methods, and they should continue. Demonstrations might be used as an additional method.

The provision of feedback should be an essential element of the learning process in the course, and time should be consciously built into the timetable to ensure this. This should be a distinguishing characteristic of the PLTC. To facilitate the provision of feedback, a distinctive feature of the PLTC should be that feedback be provided by audiotapes.

Assessment

Assessments should take place at the end of the two major modules – Solicitors' Work and Barristers' Work. The form of each assessment should be one or two skills assessments, as at present, and a short examination (about one hour or so in length) testing the ability to apply legal knowledge appropriately in the course of a transaction.

The course should culminate in a Final Assessment, which would bring together as many elements of the course as possible in order to test "lawyering." This final assessment (lasting several days) might start with an interviewing assessment. Students would identify the problems to be dealt with and the legal issues involved. This might lead them to the need to undertake some research. Following this, they would then need to undertake some writing or drafting. This written work would be assessed, and the student's overall performance could be assessed in a "viva," held before an instructor and a guest legal practitioner.

The existing Qualification Examinations should be abolished – although the testing of some legal knowledge should continue in the two end-of-modules assessments and the Final Assessment.

The concept of pre-tests and challenging parts of the course should not be extended beyond the existing arrangements in regard to Research.

Materials

In regard to materials:

- where there is a Continuing Legal Education Society (CLES) practice manual for an area dealt with in the course, it should be used as the basic source
- the *Practice Material* should be seen as supplementing these practice manuals, not as an alternative
- accordingly, in those areas where there is a practice manual, the *Practice Material* should be solely a guide for students through the practice manual, to the extent that is necessary
- the *Practice Material* in respect of the remaining areas should be largely as at present.

Use of computers in the course

There is a strategic imperative to make the course more technologically based. As well, there can be educational advantages. The course should consciously move to being one that uses computer technology in an advanced way, and in particular:

- students should be encouraged to communicate, if necessary, with their instructors and each other by email
- students' email addresses should be included in the class lists in the *Blue Pages* and instructors should be encouraged to communicate with students by email, where appropriate
- there should be one or more points in the course where students are required to undertake some fairly straightforward computer-based research (as part of a transaction), as well as in the Final Assessment (the research might be confined to material on the CLES website, thus narrowing the scope and containing cost)
- tuition in the skill of drafting should be extended, at one point in the course, to include the use of precedents, and students should be required to access a precedent forming part of a CLES Practice Manual, and work with it
- in regard to drafting, students should be required at one point to learn the basics of the revising tool in wordprocessing and use it to propose changes to an existing document
- all students should be provided with the on-disk table of contents to the *Practice Material*
- consideration should be given to enabling the students to have the choice of doing the Research pre-test in paper form, as at present, or in a computer format, whereby they would receive the test by computer, type in their answers and send the test back to PLTC by computer, *ie* email.

Distance education

For the immediate future, the course should not be offered by distance education.

The Professional Triennium

A period of about three years, perhaps to be called The Professional Triennium, could be a distinctive aspect of professional legal training in British Columbia. It would be a three-year period of structured training opportunities, beginning in articles and continuing on past Call into practice. The PLTC would be the first segment. The PLTC would be a stand-alone program, as at present, but it could also be the first stage of a series of programs (to be offered by the CLES) which, in total, added up to a far more comprehensive and thorough program of professional preparation.

There would be a range of post-PLTC programs. Those undertaking the Triennium could choose amongst them to form "majors." Majors could be based on lawyering skills, legal practice areas, *eg* conveyancing, or law practice management.

People could move on to these programs either during the remainder of their articling year, or in the first few years after Call. Although it would be regarded as a total professional development program that could be undertaken in three years, a person could spread it out over a longer period to suit their own requirements and situation. Thus it would not necessarily need to be confined to those in their first three years of practice, although that would be the norm.

The post-PLTC segments of the Triennium would not be mandatory.

There would need to be means whereby participation in the Professional Triennium could be encouraged and supported, perhaps by a system of rewards or recognition.

Staffing

The PLTC staff should be constantly in a process of professional development, for their own sakes, but particularly for the sake of the course.

There would be value in each instructor specializing in one, or perhaps two, skills. As skills teaching is at the core of the course, there could be value in instructors becoming specialists in each of the skills.

Ongoing evaluation and renewal

The course should have in place a system to enable ongoing evaluation and renewal, and that this process should begin immediately.

There needs to be a built-in ability to continue to review and readapt the course. It needs to be so structured that it can be responsive to change, where it is appropriate, and be in a state of continuous improvement – which is more than just continuous refinement.

Administration and governance

The governance of the PLTC needs to be reviewed. The current situation is not conducive to the good governance of the course, and of the implementing of the proposals in this report. The PLTC would benefit from a governance structure which:

- clearly delineates responsibilities and accountabilities
- sets, and evaluates, policy and general direction
- encourages innovation and continuous quality improvement
- enables the PLTC to take advantage of new educational technologies.

The PLTC should develop a strategy plan, for a period of say two or three years. This would be an ongoing process, *ie* the course would always be operating under a strategy plan. That plan would be largely focussed, in its early stages, on the implementation of the recommendations in this report, together with the evaluation of that implementation.

Policy recommendations

1 Fundamental purpose

PLTC should be placed in the context of the process of preparation for practice (the Articling Year), and it also should be part of the continuum of education and training, which continues on past the PLTC into all of a lawyer's professional life.

The fundamental purpose of the PLTC should be:

- *Together with the other elements of the Articling Year, to equip law graduates seeking Call with some further legal knowledge, together with a range of lawyering and law practice skills and the professional attitude, required to perform the legal functions required for general law practice in British Columbia.*
- *On completion of the PLTC students should be able, at a level of competence appropriate for an articling student, to perform, with a professional attitude, a limited range of lawyering work in a manner which effectively achieves the client's and lawyer's objectives.*

2 The Articling Year

There should be a re-emphasis on the whole Articling Year, of which the PLTC forms a part.

The prescription in the report, *The Content of Professional Legal Training*, should be reviewed with a view to it being the prescription for the content of the whole of The Articling Year.

3 Sufficient legal knowledge for Call

The primary method of determination of sufficient legal knowledge should continue to be by examination.

4 Lawyering: a unifying theme

The common and unifying theme for the course should be lawyering, and so the course should be a "lawyering course" – *ie* a course bringing together *all* the elements which make up the process of doing the work of a lawyer: knowledge, skills and attitudes.

The model upon which such a course should be based, and thus suggesting its content and structure, should be the fundamental lawyering functions of:

- gathering and analyzing facts
- identifying problems or legal issues
- researching and analyzing the law
- applying the law to problems
- considering different solutions
- developing and implementing plans, and

- presenting results.

5 Modularization

The course should be modularized into two major modules – Solicitors' Work and Barristers' Work.

6 Content of the course

The content of the course should be very thoroughly reviewed.

7 Assessment

Apart from assessment during the course, the course should culminate in a Final Assessment, which would bring together as many elements of the course as possible in order to test "lawyering."

The existing Qualification Examinations should be abolished – although the testing of some legal knowledge should continue in the two end-of-modules assessments and the Final Assessment.

8 Materials

There should be greater use of the materials prepared by the CLES, in particular the practice manuals, as part of a larger policy of seeing the PLTC as part of an ongoing continuum of legal education and training.

9 Cross-cultural issues

Sensitivity to, and ability to deal with, cross-cultural issues should be a hallmark of the course.

10 Feedback

A conscious emphasis on the provision of feedback should be a distinctive element of the PLTC.

11 Use of computers in the course

There is a strategic imperative, and technological advantages, in making the course more technologically based.

12 The Professional Triennium

A period of about three years, perhaps to be called The Professional Triennium, could be a distinctive aspect of professional legal training in British Columbia. It would be a three-year period of structured training opportunities, beginning in articles and continuing on past Call into practice. The PLTC would be the first segment. The post-PLTC segments of the Triennium would not be mandatory.

13 Staff

The PLTC staff should be constantly in a process of professional development, for their own sakes, but particularly for the sake of the course.

14 Ongoing evaluation and renewal

The course should have in place a system to enable ongoing evaluation and renewal. There needs to be a built-in ability to continue to review and readapt the course. It needs to be so structured that it can be responsive to change, where it is appropriate, and be in a state of continuous improvement – which is more than just continuous refinement.

15 Administration and governance

The PLTC should consider a more effective form of governance.

Operational recommendations

1 There should not be Qualification Examinations at the end of the PLTC as at present.

2 In regard to modularization, the two major modules of Solicitors' Work and Barristers' Work should be subdivided into two sub-modules, such that each of the four sub-modules would be just over two weeks in length: a manageable size.

3 The course should be offered such that a student could have a choice of completing the whole course in one ten-week session, as at present, or could choose to spread the course over all or part of The Articling Year.

4 The skill of research should be more explicitly incorporated into the program, including the Final Assessment. There should be greater emphasis on computer-based research, and students should be enabled to undertake such research.

5 Although the law practice skills relating to the management of clients and self should form part of the curriculum of the PLTC, those relating to law offices and law firm finances (as set out in the Content document) should be dealt with after Call and in the context of the Professional Triennium.

6 An instructor should be given specific responsibility for the law practice skills of management of clients and self. The instructor with that responsibility would be given the task of designing law practice management components which would be slotted into the course at appropriate places. Each component would both neatly integrate into the section of the course in which it was placed, and would also be part of a whole program of learning in law practice management spread over the whole course – and indeed continuing on beyond.

7 In regard to content, where possible, individual areas should be integrated into transactions to see them in context.

8 Professional attitude should be made a section in its own right in all skills assessments, and some (but not necessarily all) fact patterns should have an ethical issue built in. The Final Assessment should include an ethical issue to be resolved.

9 The variety of teaching methods presently used should continue. Demonstrations might be used as an additional method.

10 In order that the provision of feedback should continue to be an essential element of the learning process in the course, time should be consciously built into the timetable to ensure this. Feedback by audiotape should be a distinctive feature of the PLTC.

11 Assessments should take place at the end of the two major modules – Solicitors' Work and Barristers' Work. The form of each assessment should be one or two skills assessments, as at present, and a short examination (about one hour or so in length) testing the ability to apply legal knowledge appropriately in the course of a transaction.

12 The Final Assessment should bring together as many elements of the course as possible in order to test "lawyering." This final assessment (lasting several days) might include interviewing, identification of problems and legal issues, research, writing or drafting, and a "viva."

13 While the existing Qualification Examinations should be abolished, the testing of some legal knowledge should continue in the two end-of-modules assessments and the Final Assessment.

14 The concept of pre-tests and challenging parts of the course should not be extended beyond the existing arrangements in regard to Research.

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- accordingly, in those areas where there is a practice manual, the *Practice Material* should be solely a guide for students through the practice manual, to the extent that is necessary
- the *Practice Material* in respect of the remaining areas should be largely as at present.

16 The increased use of computer technology should take the form of:

- students should be encouraged to communicate, if necessary, with their instructors and each other by email
- students' email addresses should be included in the class lists in the *Blue Pages* and instructors should be encouraged to communicate with students by email, where appropriate
- there should be one or more points in the course where students are required to undertake some fairly straightforward computer-based research (as part of a transaction), as well as in the Final Assessment (the research might be confined to material on the CLES website, thus narrowing the scope and containing cost)
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17 In regard to the Professional Triennium, the PLTC would be the first segment. The PLTC would be a stand-alone program, as at present, but it could also be the first stage of a series of programs (to be offered by the CLES) which, in total, added up to a far more comprehensive and thorough program of professional preparation. There would be a range of post-PLTC programs. Those undertaking the Triennium could choose amongst them to form "majors." Majors could be based on lawyering skills, legal practice areas, *eg* conveyancing, or law practice management.

People could move on to these programs either during the remainder of their articling year, or in the first few years after Call. Although it would be regarded as a total professional development program that could be undertaken in three years, a person could spread it out over a longer

period to suit their own requirements and situation. Thus it would not necessarily need to be confined to those in their first three years of practice, although that would be the norm.

There would need to be means whereby participation in the Professional Triennium could be encouraged and supported, perhaps by a system of rewards or recognition.

18 There would be value in each instructor specializing in one, or perhaps two, skills. As skills teaching is at the core of the course, there could be value in instructors becoming specialists in each of the skills.

19 The PLTC should develop a strategy plan, for a period of say two or three years. This would be an ongoing process, *ie* the course would always be operating under a strategy plan. That plan would be largely focussed, in its early stages, on the implementation of the recommendations in this report, together with the evaluation of that implementation.

1 Terms of reference and methodology of the review

1.1 Basic requirement of the review

The basic requirement of this review is that I examine the present Professional Legal Training Course (PLTC), compare it with other practical legal training (PLT) courses, and recommend new directions for the course. In my report I am to recommend what should be retained from PLTC and what should be changed or added to a new PLT course.

In doing that, I am required to take into account, as the policy basis for the review, relevant Law Society policies. The relevant policies are:

- those relating to the general attributes the Law Society expects of newly-called lawyers, as set out in *Requirements for Newly Called Lawyers*, January 1996 (the *Requirements* document)
- which of these attributes should be learned in PLTC, as set out in *What Should be Learned during Professional Legal Training*, November 1997.

In fact both of these documents were consultation documents and the relevant current policies are found, respectively, in:

- *The Statement of Pre-Call Requirements*, October 1996 (the *Statement* document)
- *The Content of Professional Legal Training*, November 1998 (the *Content* document).

A copy of the *Content* document is in Appendix B to this report.

1.2 Scope of the review

More specifically, the scope of the review is to include three aspects of the PLTC. They are:

1. The fundamental purpose of a PLT course

The basis will be the Law Society policies mentioned above. The course will be positioned within the legal education continuum, in particular ensuring a smooth and effective transition from PLTC to CLE, and integrating educational opportunities and resources between PLTC and CLES, with a view to maximizing overall the quality of training for lawyers.

2. Course content and organization

Recommendations in regard to content and learning objectives should take into account the consultation documents on requirements for newly called lawyers and what should be learned during professional legal training. How the elements in the PLT document might best be taught should be considered. The organization of the new course should also be considered, including modularization and how there might be an effective relationship between PTLC and CLE offerings.

3. Learning methods

Consideration should include which of the present learning methods should be retained and what new or different methods might be used, such as computer technology.

1.3 Assumptions to be taken into account

As well, I am to take into account ten assumptions, which I summarize as follows:

1. The *Requirements* and *Content* documents should be used as the main blueprint for the goals and objectives and content of the course (but see observation at the end of 1.1 above).
2. The length of the course will be not more than ten weeks.
3. There should be at least three sessions of the course, offered at different times, during the year.
4. There will be some period of time (probably the majority of the ten weeks) which will require in-person student attendance at a centre where the course is offered.
5. Some part of the course will use computer or web-based technology, perhaps most appropriately in the substantive and procedural topics.
6. The course should be modularized to the greatest extent possible, to allow for ease of conversion to web-based delivery, if desired, and to facilitate pre-tests to allow student challenges and exemptions.
7. Practice management should have significantly greater coverage, and skills and sub-skills should have increased importance, in the new course. To the extent that anything is deleted, it should be in the substantive and procedural law subject areas.
8. The course will continue to be delivered through the use of a combination of full-time paid faculty and volunteer guest instructors.
9. The course must fit in within the legal education continuum. A pre-test of substantive and procedural knowledge after law school graduation but before entry to PLTC should be explored. The system of articles will stay much the same and no significant changes will be made. The new course will fit directly into education provided by the Continuing Legal Education Society (CLES), whether mandatory or not, in the articling year and throughout a lawyer's career.
10. While there may be significant capital costs in setting up a new course, the operating expenses should be no more than the cost of the present course, *ie* approximately $1.7 million.

1.4 Factors which have contributed to the need for a review

The Law Society and CLES have identified a number of factors which have contributed to the need for a review at this time. They include:

- the Law Society and CLES want PLTC once again to be the innovator and standard for other practical legal training courses

- a sense that, due to economic and other pressures, the articling component of legal education is becoming less educationally valuable
- a belief that technology can help PLTC do a better job by making the course more educationally sound, inscreasing access, allowing more coverage of topics and, perhaps, saving money
- a belief that good interpersonal, practice management and business development skills are becoming more important relative to knowledge of law and procedure
- a sense that, after 15 years, even a good program needs to be reviewed and renewed.

Apart from these factors, the issue of diversity is also a factor which, it has emerged, should also be taken into account. The Law Society is conscious of the need for it to be able to be responsive to the diversity of people entering the legal profession, and the diversity of tasks they will perform as lawyers. The changes set out below, both as to content and delivery format, support an approach to education that allows students both to cover what most would consider "core topics" while, at the same time, focusing on particular areas of interest. There needs to be a balance between the specific agendas of those coming to the profession and the implications of the Law Society's issuance of a general licence to practice. Thus, for example, the suggested changes to delivery mode, including extension of the conception of education through a longer period than the year of articling, create flexibility which is consistent with this need.

1.5 How the review was conducted

The review was conducted principally in Vancouver from Wednesday, October 28 to Friday, November 13, 1998. During this period, and thereafter, a draft report was prepared. This report was discussed with representatives of the Law Society and the CLES.

The processes used to undertake the review were:

- a number of meetings, 35 in all, with a range of people with an interest in, or understanding of, the course – a list of all these meetings is in Appendix A to this report
- a considerable number of informal meetings with the Director of the course, the instructors and other members of staff, the Executive Director of the CLES, and senior members of staff of the Law Society
- a review of course materials, handbooks and other printed material
- observation of the course in operation
- consultation with, and gathering of information, from several similar courses elsewhere in the world.

Towards the end of the period spent by the reviewer in Vancouver, two meetings were held – one with the Director and instructors and the other with Don Thompson and Maureen Fitzgerald of the Law Society and Jack Huberman, Bill Duncan, Ron Friesen and Linda Rainaldi from the CLES. At these meetings an early draft of the report was outlined and comments and suggestions were made.

Section A

The fundamental purpose of a practical legal training course

2 Matters to be considered in identifying the fundamental purpose of a practical legal training course

The fundamental purpose of a course of PLT depends, in part, on the context in which it is placed. PLTC does not stand alone. It is one of several elements which, together, form the pre-Call requirements for all those seeking to be called as barristers and admitted as solicitors in British Columbia (in this report described as "Call"). The Law Society has adopted two reports which deal with these requirements, and it is appropriate to use them as the foundation for articulating the fundamental purpose of the course.

2.1 *The Statement of Pre-Call Requirements*

The *Statement* is a description of the knowledge, skills and qualities thought necessary for newly called lawyers. In order to work towards articulating the fundamental purpose of a PLT course, it is useful to summarize the *Statement's* line of reasoning.

What lawyers do can be described in terms of a series of functions. In order to carry out those functions, lawyers "should possess" a range of general and more legal knowledge, skills, attitudes and characteristics. How they fit together with the functions is shown in the matrix shown in Table 2.1.

This is a model of what lawyers do. What is unstated, but implied, is that *at Call* a lawyer ought to be able to do all these things. Though the standard required is not stated, presumably it is at a basic level (whatever that may mean in practice). Even so, the expectation is that a lawyer at Call will possess *all* of the knowledge, skills, attitudes and personal characteristics. There is a question as to whether that is realistic, particularly as to some of the management skills.

2.2 *The Content of Professional Legal Training* document

Those being called, in order to satisfy the requirements of the *Statement*, need to bring with them all of this knowledge, skills, attitude and characteristics. Some of it will come from their pre-law education and their own experiences and character. But much of it will come from the education and training they receive within the legal education continuum – commencing at law school, passing through PLTC and continuing indefinitely into CLE. A copy of the *Content* document is in Appendix B.

The question is what part PLTC will play in that continuum; *ie* what it will contribute to enable the applicant for Call to assemble all that he/she must possess? In other words, what is its fundamental purpose?

Table 2.1 What lawyers do

Need to possess	Functions						
	Gathering & analysing facts	Identifying problems /legal issues	Researching & analysing the law	Applying the law to problems	Considering different solutions	Developing & implementing plans	Presenting results
A. General knowledge, basic skills & basic attitude							
B. Legal knowledge							
1. … about legal systems							
2. … about legal theory							
3. Framework knowledge							
4. Transaction-based knowledge							
C. Legal skills							
1. Intellectual skills							
2. Communication skills							
D. Management skills							
1. Operation of a law office							
2. Client management							
3. Financial management							
4.Law firm organization & planning							
E. Professional attitude							
F. Personal characteristics							

The Law Society has effectively prescribed this in a document, now entitled *The Content of Professional Legal Training* (the *Content* document). It identifies what the Society expects will be taught in the PLTC. A matrix to identify where responsibility lies, and in particular what responsibilities rest with the PLTC, based on what is proposed in the *Content* document,[1] is as follows:

Requirements	Pre-law	Law School	? self-learned	PLTC	Articles	Post-Call (CLE)
A. Lawyers functions				X		
B. General knowledge, skills and attitude	X					
C. Legal knowledge						
– of legal systems		X				
– of legal theory		X	X	x		
– framework substantive knowledge		X	X	x		
– framework procedural knowledge		X		X		
– transaction-based knowledge						
D. Lawyering skills						
– intellectual skills				X		
– communication skills				X		
– case management skills				X		
E. Law practice skills				X		
F. Professional attitude				X		
G. Personal characteristics				x		

X = PLTC to have primary responsibility for training

x = to be dealt with "incidentally" or selectively in PLTC

But I suggest that it is useful not adopt this statement as pointing to the fundamental purpose of PLT until we have set the PLTC into two wider contexts.

2.3 The wider contexts in which PLTC operates

It can be seen that there are no crosses in the Articles column in the above table. The *Content* document does not allocate any specific tasks to that aspect of the continuum. Yet, PLTC occurs within the context of articles, insofar as an applicant for Call undertakes the course whilst he/she is also undertaking articles.[2] I suggest that the *Content* document be reconsidered and amended such that some of the content might be allocated to the year of articles. I will return to this wider context in the next chapter.

One of the assumptions for this review is that the course fit into the legal education continuum. This is the second wider context and I will deal with it in chapter 15.

[1] Some of the classifications and terminology in the *Content* document varies from the *Statement* document.

[2] Many undertake the course at the beginning of (or perhaps in their eyes prior to) their articles, or at the end.

2.4 The national legal market

There is, in fact, another context, and that is the course's place in the Canada-wide system of legal education and training. It would be good if the PLTC were at the forefront of moves to develop a national Canadian legal market. To some extent this already exists. For example, at least half of the law students at the University of Victoria (UVic) will not go on to do the British Columbia PLTC. They come from other provinces and will return to them.[3] At the University of British Columbia (UBC), about one quarter of the students spend one term at another university, often outside Canada. Thus the student body comes to the PLTC with a more national, and even international, perspective than that suggested by the content of the course and the profession's province-based requirements for Call.

This raises the issue of whether, at the level of PLT, there should be national standards. The PLTC could lead the way in this regard.

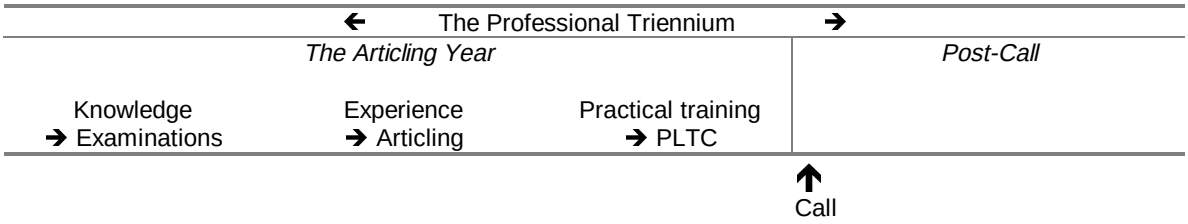
It has been suggested, for example, that the proposed Entrance Examination (see chapter 5), could evolve into being part of a uniform entrance examination across Canada. In this case, the materials on which the examination were based would be Canada-wide materials. So long as the examination is embedded in the PLTC, it would be harder to make it national.

Equally, there is the prospect of some Canada-wide commonality in what is required by way of professional legal training, or in the pre-Call year generally.

[3] Thus the Dean of Law at UVic told me that he is as much interested in the bar admission courses in Ontario and Alberta, and he sees himself as part of a national system.

3 The concept of The Articling Year

The *Content* document sets out what should be learned during PLT, and goes on to state that discussions of what should be learned in law school and articling will take place later. However, for the purposes of re-visioning the PLTC, I find it useful to place the course within two contexts: the Articling Year, and within a period which extends beyond Call; what I have tentatively called, the Professional Triennium.[4] This can be shown diagrammatically as follows:



The immediate impact of this is, I suggest, that for the purposes of re-visioning we can best determine what should be learned in PLT in the context of what should be learned in The Articling Year generally. My argument is that it is really only possible to determine what should be the purpose of PLT in the context of what should be the purpose of The Articling Year. Indeed, the purpose of that year needs to be determined in the even wider context of the purpose of the proposed Professional Triennium (which I will discuss in chapter 16).

In other words, I suggest that the one year period from graduation to Call be seen as a whole; as an integrated time of professional preparation, with its own objectives and components. I also suggest that the proposed content of PLT (as set out in the *Content* document) be, in fact and with some slight adaptation, the prescribed content of The Articling Year itself.

The Articling Year has, at present, three components:

- the qualification examinations
- the PLTC
- articles.

This suggests that, during the Articling Year, the profession needs to be satisfied as to four things:

1. that the applicant possesses sufficient legal knowledge
2. that the applicant, in the application of that knowledge, possesses sufficient lawyering and law practice skills and professional attitude

[4] These are simply terms I have chosen for the purpose of this report. It may well be thought appropriate to choose other terms. The term, The Articling Year, could be seen to give undue emphasis to just one of the three elements of the year. Another term, used by accountants in Australia for the year of professional preparation following university, is The Professional Year.

3. that the applicant has had sufficient actual experience of the practice of the law and, as well

4. that the applicant possesses good character.

This leads me to conclude that:

- the *Content* document should, appropriately reviewed and amended, be the prescription for the content of the whole of The Articling Year
- the primary method of determination of sufficient legal knowledge should continue to be by examination, although not necessarily at its present place at the end of PLTC
- the ability to conduct oneself as a lawyer (what is often called "lawyering"), at a level appropriate for Call, should be the primary objective of the PLTC[5]
- articles themselves should be seen as an important element, and so the purpose of PLT should take into account what is assumed will be learned in articles

I am assuming that the fourth element, the determination of good character, should take place as at present. I will not deal with this aspect further in this report. I will discuss the other two elements of The Articling Year (legal knowledge and articling) in chapters 5 and 6.

[5] Thus it would be classified as a lawyering course, not simply as a skills course.

4 Recommended fundamental purpose of the PLTC

4.1 Some important aspects of the current PLTC

The PLTC is a full time course of practical training which all those undertaking articles in British Columbia must also undertake in order to be called. Many common law jurisdictions have similar courses and they too take place, generally, before Call but after completion of a law degree.

The PLTC is a ten-week course. It is therefore very intensive. Students are allocated to instructors in groups of about 20. That instructor has responsibility for instruction for his/her group of students for the full period of the course.

Instruction is provided by the instructors but an important element is also the guest instructors, who are drawn from the profession. The instructors have generally been with the course for some time and are experienced and committed to their work. They appear to have generally a very high level of respect from the students.

In effect, the course is a combination of training in legal skills, applied substantive law and legal transactions. The skills focus of the course is strongly emphasized. Students are taken through some legal transactions and given an oversight of others. However, it is not a full transaction-based course, and indeed there would not be time for such a course in 10 weeks. There is not a great emphasis on simulated legal transactions.

Students receive an extensive set of materials to support the instruction – both in regard to applied substantive law or procedural law and skills.

Assessment is a combination of skills assessments and the Final Examinations. Although the "failure rate" for both is more or less the same, greater focus seems to be on the examinations.

4.2 Current statements of purpose

I return then to articulating a fundamental purpose for the PLTC. The *Blue Pages* state that the "broader objective" of the PLTC is "for students to be able to perform legal skills competently, integrated with specific knowledge and a demonstrated awareness of professional responsibility concerns." It is stated that "while PLTC is a skills-based course, the skills taught and practised are inseparable from a context of knowledge and attitudes toward the practice of law."

Apart from this brief statement, there are, I understand, a set of objectives of PLTC, being those proposed in the 1986 Cameron Report and adopted by the Benchers in that year. They are:

The Law Society of British Columbia, through residential bar admission training, aims to improve the skills, knowledge and attitudes of articled students by:

- providing teaching and learning opportunities for students to bridge the gap between the analytical skills and knowledge gained in law school and the application of that knowledge and those skills in situations which will be faced in legal practice
- providing systematic practical training in a range of legal sub-skills and the basic skills of: interviewing and counselling, negotiation, writing, legal research, law office management, drafting, and advocacy
- providing training and models for the understanding of rules of professional conduct and the development of professionally responsible attitudes in students
- providing materials and learning opportunities for the understanding of substantive and procedural law in widely conducted fields of practice
- providing opportunities to manage and conduct a range of simulated law office transactions (files) in order to learn to integrate and apply skills, knowledge and professionally responsible attitudes, and
- to test and certify students as competent for Call and Admission by means of criteria-based skills assessments, substantive and procedural law examinations, and the pervasive assessment of student understanding in areas of professional responsibility.

These objectives do not appear to be replicated in any PLTC publicly distributed documents, including the *Blue Pages* and I assume that, in reality, they are not referred to or seen as authoritative.

4.3 Statements of purpose of PLT courses in other countries

I now turn, as required by my terms of reference, to consider several other courses in other countries.

In England, all legal practice courses must meet the *Written Standards* of the Legal Practice Board. They are as follows:

Aims of the course

1. *to prepare students for practice*
2. *to provide a general foundation for subsequent practice.*

The student should be able to:

1. *perform, with understanding, the skills and tasks required to complete transactions, in a manner which effectively achieves the client's and solicitor's objectives*
2. *identify the client's objectives and different means of achieving those objectives*
3. *identify the steps and decisions that need to be taken to implement those objectives*
4. *identify any difficulties that may arise in implementing those steps and procedures*

5. *perform the skills and tasks under the supervision normally and properly accorded to the trainee*
6. *make the most of the experience which follows and gain the confidence necessary for competence in practice*
7. *learn from the experience of the course and from future practice*
8. *transfer skills learned in one context to another*
9. *demonstrate an awareness of the limits of their own competence and know when to ask for assistance*
10. *demonstrate an awareness of the need to consider the potential impact of European Community Law and to bear in mind that clients will frequently be unaware of the impact of EC provisions*
11. *demonstrate a sufficient grasp of Revenue Law to understand and apply its principles to the Compulsory and Elective areas of the course studied.*

In New South Wales, the aims of the College of Law's Professional Program are:

to equip students with:

- *the framework, concepts, knowledge, skills, attitudes and values which they will need in the early years of their careers and which form a basis for their continued personal and professional development*
- *the ability to apply legal knowledge and skills in a practical and creative way*
- *the ability to identify legal issues and to plan and implement strategies to achieve client objectives or to solve client problems*
- *a sense of ethics, professionalism and professional responsibility, including the attitudes, values and ethical standards requisite for client service in the public interest.*

In New Zealand, the aim of the Institute of Professional Legal Studies is:

To contribute to the training of law graduates by providing pre-admission practical training and experience which should cover those matters in addition to the degree with which it is necessary in the public interest for all lawyers to have sufficient familiarity, before being admitted to the profession and commencing to practise law, and in particular to:

- *prepare the trainee for supervised practice*
- *provide a trainee with the skills which when developed through supervised practice will equip the trainee to reach the level of professional competence required to represent a client without supervision*
- *develop a sense of the professional role and responsibilities required of a lawyer as a practitioner and an officer of the court*
- *provide a foundation for life-long learning of the practice of law.*

4.4 Recommended fundamental purpose for the PLTC

In considering these objectives, particularly those from England, I counsel against the writing of purposes and objectives which are clearly unattainable because they are so inclusive, broad or are set at so high a standard. Such statements tend to be ignored and in reality are not used. It is better to write purposes and objectives which reflect what is capable of achievement in, what is after all, a quite short period of ten weeks.

I recommend that the following be a working draft of the fundamental purpose of the PLTC.[6]

> *The fundamental purpose of the PLTC is, together with the other elements of The Articling Year, to equip law graduates seeking Call with some further legal knowledge, together with a range of lawyering and law practice skills, and the professional attitude required to perform the legal functions required for general law practice in British Columbia.*[7]
>
> *On completion of the PLTC students should be able, at a level of competence appropriate for an articling student, to perform, with a professional attitude, a limited range of lawyering work in a manner which effectively achieves the client's and lawyer's objectives.*
>
> *As well, students should be aware of their need for continuing learning and ongoing professional development, and have some strategies to address that need.*

On the basis of this fundamental purpose, and after a review of the content of the course, there will need to be a restatement of the course's specific objectives. The following suggestion is based on the *Content* document:

On completion of PLTC, students will, at a basic level, be able to perform the fundamental functions of lawyering, that is, they will be able to:

- gather and analyze facts
- identify problems or legal issues
- research and analyze the law
- apply the law to problems
- consider different solutions
- develop and implement plans, and
- present results.

---

6 The wording is partly based on a proposal prepared recently for the Credentials Committee.

7 In a memorandum prepared for the Credentials Committee on 21 October 1998 it was suggested that a further purpose should be "to equip applicants for continuing personal and professional development." Whilst this concept of ongoing learning accords with contemporary educational practice, I believe this should be regarded as an underlying principle upon which the course is conducted, rather than a purpose, as such, of the course. I am not confident that, as a purpose, it could be shown that it can be, or has been, achieved.

To enable students to be able to perform these functions, the PLTC will:

Framework knowledge

Assume students come to the PLTC with an understanding of framework substantive and framework procedural knowledge, but make reference to, and refresh students' recollection of it, it to the extent necessary to enable students to undertake the course.

Transaction-based knowledge

Enable students to learn the basic components of legal transactions, and the details of a few basic transactions.

Lawyering skills

Enable students to learn and practise some intellectual, communication and case management skills.

Law practice skills

Enable students to learn and practise some skills relating to the management of themselves and of clients.

Professional attitude

Enable students to learn about ethics in the context of lawyering.

Section B

The other two elements of the Articling Year

5 The determination of sufficient legal knowledge

In this chapter I consider that element of The Articling Year which deals with the requirement that applicants for Call have sufficient legal knowledge.

5.1 The specific requirements of *The Statement of Pre-Call Requirements* document

The Statement of Pre-Call Requirements is a description of the knowledge, skills and qualities thought necessary for newly called lawyers. Its description of the knowledge required should be the guide as to what is meant by "sufficient legal knowledge," although this does not mean that everything listed in that statement needs to be tested in The Articling Year. The document classifies legal knowledge into four categories, as set out below:

> ***1 Knowledge of legal systems***
>
> *An understanding of legal processes and the role of courts, judges, lawyers and law enforcers in these systems.*
>
> ***2 Knowledge about legal theory***
>
> *An understanding of why law exists and how laws and legal systems work together in society, as well as knowledge of jurisprudence and how the law is formed.*
>
> ***3 Framework (substantive and procedural) knowledge***
>
> *This refers to the fundamental underpinnings or frameworks of law. A competent lawyer should have sufficient understanding of concepts of law to:*[8]
>
> - *recognize circumstances that give rise to legal relationships creating legal rights and obligations*
> - *characterize legal matters into appropriate categories of law*
> - *understand the legal principles that govern legal relationships and how these principles create, regulate, correct and terminate the relationships between the parties*
> - *understand the social, political or other policy that underlies statutes, regulations and case law*
> - *understand the basic premises or fundamental rules underlying various areas of law to enable a lawyer to correctly identify legal issues.*
>
> *Framework procedural knowledge is a basic understanding of the remedies available and the frameworks of procedural law, and it includes:*
>
> - *understanding and recognizing the regulatory structure that governs legal proceedings and legal transactions*
> - *understanding basic legal remedies available*

[8] Although it does not explicitly say so, I assume the *Statement* intends this to be its description of what is meant by framework substantial knowledge.

- *understanding the framework of rules governing procedures*
- *understanding the rules of due process*
- *recognizing limitation periods in legal transactions or proceedings*
- *understanding the rules and procedures that govern the introduction of evidence in legal proceedings.*

4 Transaction-based knowledge

This refers to the basic components of a transaction, how to complete a few basic transactions and know enough to develop skills necessary to manage most transactions.

A competent lawyer should:

- *understand the steps necessary to initiate, conduct and conclude certain legal proceedings and transactions*
- *understand business or legal practice customs that are applicable to particular legal proceedings and transactions*
- *have the knowledge to evaluate whether a particular proceeding or transaction is necessary and to assess its substantive validity, technical accuracy and procedural correctness.*

The *Content* document states that applicants should already have demonstrated that they possess framework procedural and substantive knowledge at the time they commence the PLTC, and should be taught transaction-based knowledge at the PLTC. This is not to say, of course, that framework knowledge will not permeate the course and, in fact, will be constantly referred to and reviewed, and knowledge refreshed.

How, then, will applicants' possession of framework knowledge be demonstrated? This brings us to the issue of the examination, be it before, during or after PLTC.

I am taking as a given that some aspects of legal knowledge will be tested in The Articling Year, and that the testing will be done by examination. The issues are what aspects of legal knowledge should be tested, and when in The Articling Year.

This is relevant to this review because that testing is one of the two other elements of that year, and hence the purpose and content of the PLTC should reflect, and integrate with, what is happening in those other two elements. Apart from this, I am considering this because one of the assumptions upon which I was asked to base the review includes the statement "a pre-test of substantive and procedural knowledge after law school graduation but before entry to PLTC should be explored."

As I see it, there are a number of matters to be clarified in regard to the proposed Entrance Examination. I have outlined them in Appendix C.

5.2 The practical implications for the PLTC of there being an entrance examination

A number of practical implications flow as a result of the decision that there be an entrance examination.

The first is that it would be quite incorrect to say that the course is no longer about substantive law or substantive procedural law. Students will still need to use this knowledge, and it will be an intergral part of lawyering. But the course should not see it as its responsibility to teach in these areas *de novo*. It should be assumed that students can, and should be able, to access this knowledge. This will flow through to the actual face-to-face teaching, in particular that given by guest instructors, and the materials, particularly the *Practice Material*.

The content of the course will, I believe, quite substantially change as a result of this. It does not mean that substantive law will no longer be discussed and be an intergral part of what students must do, but it will be dealt with on the basis that students have, or can retrieve, this knowledge. This should free up considerably more time for considering skills and the process of lawyering itself.

Instructors will need to reconceive their role.

When it comes to assessment, substantive law will continue to be assessed, but not on the basis that it was the course which taught it to them, as it were, and not generally in its own right. Rather it will be assessed insofar as it is a core element of lawyering. Thus, the assessments should not start from the proposition that it is in the PLTC that students will be tested on their substantive knowledge as there is no other place where they will be so tested — because, indeed, they will have been tested in the entrance examination. On the other hand, the assessments should not exclude testing of substantive law because it lies at the core of lawyering.

6 Practical experience through articling

My terms of reference do not extend to articling. I will only make a few comments in order to ensure that my consideration of the PLTC is within the context of The Articling Year, rather than in isolation – as I have urged.

There is a set of *Articling Guidelines* which are described as "the mutual obligations of principals and students." They do not explicitly set out objectives for articling. We can glean from them that students are to be instructed:

- generally on the various aspects of the practice of law and of professional conduct
- on the functions of the professional bodies, including the role of the Law Society, the *Legal Profession Act*, professional obligations, etc
- on the responsibility to clients to maintain competence
- most importantly, on professional conduct and responsibility.

There is also an obligation in regard to practical training. A principal is to ensure that the student has adequate exposure to most of the areas that he/she will encounter in his/her own practice. This is to be achieved, if necessary, by having other principals provide some experience and by ensuring students do not channel time into particular fields to the exclusion of others.

As well, there is an obligation to ensure the student becomes familiar with good general office practice and of the need to treat clients competently and courteously.

Presumably, to ensure that articles are broad-based, and for other purposes, articled students complete a questionnaire at the end of their articles and file it with the Law Society. It is signed by both the student and the principal. There are 17 questions, many of which seek information as to specific areas of practice, such as real estate transactions and litigation, and others seek information about experience of office administration and professional responsibility.

Although outside my terms of reference, I suggest that when articling is to be considered, its objectives could usefully be more specifically set, within the context of the *Requirements* document, and such that the various elements of The Articling Year supplement and support each other. As part of that consideration, other matters that might be considered are whether the mutual obligations of student and principal might be incorporated into some form of "contract," such as has been done in England with the Training Contract. Thus, the obligation to provide broad experience, for example, might be more explicitly delineated in advance. Rather than a questionnaire at the end of articling, there might be some process whereby the student and principal jointly check that the "articling contract" has been fulfilled.

If use of the questionnaire is to be continued, I suggest that the results should be compiled and published to the profession generally, perhaps through the annual report of the PLTC (as to which see below). My experience is that in PLT courses generally, and related activities, data is often collected by questionnaire but, whilst compiled, the results are not reported back to those who provided it, or

published generally. In other words, these questionnaires often, in reality, serve no purpose and have simply become an activity which is carried out independently of any wider strategy.

In section 8.4 of this report I consider the issue of whether there might be any further PLT after the PLTC and before call.

Section C

Course content and organization

7 The present structure of the PLTC

The curriculum is said to be designed around three pillars:

- substantive and procedural knowledge
- legal skills
- professionally responsible attitudes

but seeks to integrate these three elements.

The curriculum is organized on the basis of chosen major skills. The skills are shown below in italics and the transaction/s used as the basis or context for teaching that skill (*ie* the context for integration) are listed below each one:

Writing
Conveyance

Advocacy
Civil Trial
Criminal Trial

Drafting
Commercial Law: buying and selling a business

Negotiation/Mediation

Interviewing and Advising
Family Law
Wills

In addition, the following fundamental topics receive overview attention:

Builders' liens
Collections
Financial statements
Incorporation
Law office management and trust accounting
Taxation
Wills & Estates

How this is all brought together in the whole program for a session is as follows, and in the following order:

Skills & Transactions	Fundamental topics	Assessment
	Professional responsibility	
	Law office management	
	Professional responsibility	
Writing – Conveyance		
	Builders' liens	
Advocacy – Civil trial		
	Law office management	
Advocacy – Criminal trial		
Advocacy – Civil trial		
	Corporate practice	
	Professional responsibility	
Drafting – Commercial		
	Secured transactions	
		Advocacy
	Financial statements	
	Taxation	
Drafting – Commercial (buy/sell)		
Negotiation		
Mediation		
		Writing
	Wills	
	Family Law	
	Probate & Estate Administration	
Interviewing – Family		
Interviewing – Wills		
	Collections	
		Drafting
		Interviewing
		Qualification Examination

Although the course flows from one transaction to the other, it is not a primary purpose to teach students how to undertake a series of what are seen as basic or commonly encountered transactions. This is probably because it is known that all students are also undertaking articles, which is where the focus will be far more on learning the steps and decisions involved in transactions.

8 Three elements for a re-visioning

8.1 The concept of lawyering as a unifying theme for the course

The course would benefit from being built around a common and unifying theme. This would be more than just the course's objectives. It would be a theme which ran through all of the activities, and reflected an underlying approach to what being a lawyer is about.

There is a current debate as to the place of substantive and procedural law in the course. It seems to me that there need not be any conflict if the course were seen to be about preparation for lawyering. By "lawyering" I mean carrying out the work of a lawyer, which involves a *mix* of framework knowledge, transaction-based knowledge, lawyering skills, law practice skills, professional attitude and personal characteristics. *All* of them come into play when a lawyer engages in work. Of course, in every transaction, and at different times in a particular transaction, each of those elements will play a lesser or greater role compared to the rest.

So, the course could be portrayed as neither a skills course nor a transactions course, but as a lawyering course. This means that legal knowledge would be of vital and central importance. Equally, professional attitude would be vital and central. Having said this, in the overall balance, significant emphasis should be placed on skills rather than learning a lot of procedural steps, or large amounts of law and procedure. In a short period, the central aim should be to develop skills which span many different areas of legal work.

But, whereas the course would seek specifically to provide training, *de novo* as it were, in transaction-based knowledge, lawyering skills and professional attitude, it would proceed on the basis that students already had the other elements of legal knowledge, particularly framework knowledge and, to some extent, intellectual skills – as well as general knowledge and basic skills, and personal characteristics. This is not to say that, in the day-to-day tuition, these would be deliberately avoided. In particular, framework knowledge would be likely to be dealt with daily, and students' knowledge would be refreshed by brief reviews of the relevant substantive or procedural law.

This would also mean, incidentally, that in the assessments in and at the end of the PLTC this type of knowledge may well be assessed, but not specifically and in itself or alone, but in the context of assessing lawyering ability.

Thus, the course would teach transactions, skills and professional attitude, not ultimately in themselves but as components (together with previously learned legal knowledge) of lawyering.

This means the course needs to have a clear vision of what is meant by lawyering. In brief, lawyering is what lawyers do, as the *Content* document says. The basic theme or model therefore, and thus the basic structure of tuition for the transactions and to contextualize the skills, could appropriately be the lawyers' functions set out in the *Content* document.

I therefore recommend that the basic model for the course, and its content and structure, be built around the fundamental lawyering functions:

- *gathering and analyzing facts*
- *identifying problems or legal issues*
- *researching and analyzing the law*
- *applying the law to problems*
- *considering different solutions*
- *developing and implementing plans, and*
- *presenting results.*

This model would need to be developed and carefully extrapolated to the various components of the course in the process of redesign. It would be introduced to students near the beginning of the course and, as tuition proceeded, there would be frequent references back to it, to identify where a particular skill or part of a transaction fitted into the model.

By way of illustration, the existing skills could fit into this model as follows:

Lawyering functions	**Legal skills**
Gathering and analyzing facts Identifying problems or legal issues	Interviewing
Researching and analyzing the law Applying the law to problems Considering different solutions	Research
Developing and implementing plans	Writing Drafting
Presenting results	Advising Advocacy Negotiation/Mediation

This representation indicates that there are components of the lawyers' functions model which are not covered by any of the skills, at least directly. It is true that, for example, in writing a letter of advice, the functions of identifying problems or legal issues, applying the law and considering different solutions would be covered. But the model makes these aspects of lawyering more explicit, in a way which the mere listing of skills does not.

There are other possible unifying themes. For example, it is said by some that the basic skill or function of a lawyer is problem-solving. The lawyers' functions set out above could, in fact, be portrayed as a model of problem-solving. However, I suggest that the concept of lawyering, rather than problem-solving, is probably an easier model for people to understand and accept.

8.2 Barristers' and solicitors' work

Although I think the lawyers' functions model can apply equally to barristers' and solicitors' work, it may well be that it needs to be teased out somewhat differently in these two contexts. This would be a

matter for the redesign process. I suggest that it might assist, if this model were to be the basis of the course's structure and tuition, to divide the course into these two basic areas of lawyers' work.

Students would learn barristers' lawyering work and solicitors' lawyering work. The same lawyers' functions model would be used for both, thus instruction in one would be reinforced in the other. In both sections, applicable lawyering functions would be dealt with. Most functions would, as a result, be dealt with twice in the course. As well, in both sections, law practice skills and professional responsibility would be taught, as applicable to the particular aspect of lawyering work.

There could be some problems with this concept. First, some students may see their future career as being solely as a barrister or as a solicitor. They may feel that the other aspect of the course was not relevant to them.

It has also been put to me that the term "barrister" is dated and reflects a non-contemporary concept of legal work, perhaps emphasizing its adversarial aspects. One way to deal with that is to reconceptualize what barristers' work is, so that it is primarily seen as dispute resolution rather than adversarial work. The term then could remain. It is after all the official term to describe lawyers in British Columbia, and so it seems appropriate to use it.

8.3 Modularizing the course

This, then, brings me to the issue of modularizing the course. I have been specifically asked to consider modularization and indeed one of the assumptions is that the course will be modularized to the greatest extent possible.[9]

Modularization is certainly in vogue in educational circles. I am not convinced that it is always desirable, as it can tend to atomize what is to be learned, leading to possible trivialization and making more difficult students' capacity to identify and make explicit for themselves the overall integration, in this case within the unifying theme of lawyering.

However, I can see some benefits:

- it tends to lead to some assessment being spread out over the course rather than at its conclusion and possibly overshadowing the course (although this is possible without modularization)
- it would enable the PLTC to identify students who are not performing well and require them to reach a certain standard before continuing in the course
- it would enable students who have to discontinue, due to illness or other circumstances, to leave a session and enter a subsequent session of the course more easily and without undue penalty
- it would enable the course to be offered in an alternative mode whereby articling students could spread their PLT over their articling year
- it would provide a basis for future technological or web-based delivery of the course, should that be seen as desirable and feasible

[9] I will respond to the suggested reasons for modularization, as expressed in the assumptions, later.

- it would provide a basis for pre-tests, to facilitate student challenges and exemptions (which I will discuss later, but simply indicate at this stage that I am not convinced this is always desirable)
- it would enhance individual ownership of modules by specialists and motivate continuous course improvement.

I recommend that the course comprise two major modules – Solicitors' Work and Barristers' Work.

However, as modules need to be sufficiently short to enable some of the benefits to accrue, I suggest both of these major modules be themselves divided into two sub-modules. Overall, the course would be structured something like this:

Week 1	Solicitors' Work I	
Week 2	Solicitors' Work I	
Week 3	Solicitors' Work II	
Week 4	Solicitors' Work II	
Week 5	Solicitors' Work II	Solicitors' Work Assessment
Week 6	Barristers Work I	
Week 7	Barristers Work I	
Week 8	Barristers Work II	
Week 9	Barristers Work II	Barristers' Work Assessment
Week 10	Final Assessment	

Solely to illustrate how this might work, I set out below a rough guide as to how the existing content of the course would be fitted into this new modularized structure:

	Skills	**Files (Transactions)**	**Professional responsibility/Attitudes**	**Other topics**
Solicitors' Work I and II (c. 4 ½ weeks)	Drafting	Residential conveyance & mortgage	Law office management	Builders liens
	Interviewing & advising	Buying & selling a business	Trust accounting	Financial statements
	Legal research		Professional responsibility	Incorporation
	Negotiation (?)			Taxation
	Writing			Wills & Estates
	Assessment of Solicitors' Work module			
Barristers' Work I and II (c. 4 ½ weeks)	Advocacy	Civil trial	Law office management	Collections
	Drafting	Criminal trial	Professional responsibility	
	Interviewing	Family law (separation & divorce)		
	Legal research			
	Negotiation			
	Mediation			
	Assessment of Barristers' Work module			
Both modules (c. 3 days)	Final assessment of whole course			

This is illustrative only, and is not a suggested structure, but rather simply to show how the existing content might be fitted into the proposed structure.

Students would only need to satisfactorily complete the modules, Solicitors' Work I and Barristers' Work I. They would obtain credit for them, but there would no formal assessment. Each of these modules would be about two weeks in length. They would be prerequisites for Solicitors' Work II and Barristers' Work II respectively, but as there would be no formal assessment at the end of either of them, students would automatically move on to the next module. They could also, in the alternative, withdraw and recommence in a later session, with credit.

Towards the ends of the modules, Solicitors' Work II and Barristers' Work II (both of about 2½ weeks in length), there would be assessments. Having completed all four modules, by a combination of satisfactory completion and of passing these two assessments, a student would then be able to undertake the Final Assessment. I will discuss the proposed nature and content of these assessments in chapter 12.

The overall effect of this is that a student would have a choice of completing the whole course in one ten-week session, as at present, or could choose to spread the course over all or part of The Articling Year. Apart from student choice, the PLTC could require a student to repeat a module before proceeding further. Or a student could defer any module and seek to undertake it in a later session, should illness or other circumstances necessitate this.[10]

Thus, there is the prospect of a student undertaking their PLTC in four instalments spread out over The Articling Year. I suggest that this should be presented to prospective students, and to the profession, as an alternative mode of undertaking the course. That is, it should be presented as one of two modes in which the course could be undertaken. It should be promoted as a positive development, not presented simply as a choice only used if unfortunate circumstances prevent a student from taking the course in one session.

It is true, of course, that students from outside Vancouver would be unlikely to find this option attractive.

There could be an implication so far as students' fees were concerned. They might either pay, upfront, for a whole course, or they might pay per module.

It may be that the option of undertaking the course spread over the Articling Year could have cost implications. I suggest that the course be restructured as a first step, and then the question of offering it other than in a continuous ten-week period can be addressed after the new educational structure is in place.

[10] I do appreciate that this could cause administrative difficulties, with uncertain intakes into sessions and modules. However, I think that, wherever possible, educational institutions should make every effort to fashion their programs to achieve educational aims and student circumstances, rather than administrative convenience.

8.4 Whether there might be any further PLT after PLTC and before Call

I have been asked to look at the course in the light of contemporary developments in similar courses elsewhere. Some PLT courses are an alternative to articles (*eg* in Queensland or Victoria). Others are in jurisdictions where there are no articles (*eg* New Zealand). But some jurisdictions are similar to British Columbia in that the PLT course is set at the beginning or in a period of on-the-job work experience which is similar to articles. Two such jurisdictions are England and New South Wales.[11]

In England trainees must, during their training contract, complete the Professional Skills Course (PSC). It comprises three compulsory core modules and a range of electives which can be tailored to meet the needs of individual trainees and firms. The core modules must be taken by face-to-face tuition but up to half of the electives can be studied by distance learning. The core modules are Financial & Business Skills, Advocacy & Communication Skills, and Ethics & Client Responsibilities. These have been chosen, I understand, because it is thought that they can be best learned in the context of work, rather than in advance. The importance and practical use of information technology is addressed. Overall, this element of training is included as it is recognized that some aspects of lawyering can virtually only effectively be learned in the context of work.

In New South Wales, the Professional Program has two stages.[12] The first stage is 15 weeks of face-to-face instruction, similar to the PLTC. The second stage comprises 15 weeks of practical experience during which students complete 75 hours of Continuing Practical Training. It is offered totally by distance mode and, again, its content is principally those matters best learned in the context of actual practical experience.

In view of these approaches in England and New South Wales, I have considered whether to recommend that there might be some further training for articling students during their articles – perhaps by distance education.

It was pointed out that there is a logistical problem in that some students will have only just completed their PLTC whereas others would have completed some times previously. Thus, the concept that this last short session would follow work experience post-PLTC would not consistently occur. As well, it was said that many articling students do not receive any practice management experience in articling, with no responsibility for files, so there may be little to build on.

I have decided that the concept of The Professional Triennium can adequately pick up this approach and do not recommend a final short session shortly before Call.

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11 In England the period equivalent to articles is called "the training contract," and in New South Wales it is called "practical experience."

12 There is also a multi-media mode of undertaking the course, which almost totally involves distance education using multi-media, in particular CDRoms and email.

Those students who moved onto the Professional Triennium could usefully, in this period, focus on those law practice skills which I have recommended should be taught after the PLTC.

9 The actual content of the course

The course has been updated to reflect changes in the law and to improve the way in which the activity plans are structured. As well, PLTC staff has made changes to reflect the changing nature of practice, *eg* residential real estate coverage has decreased and new sections on mediation and law office management have been added. However, the actual structure of the course has remained largely unchanged for about ten years.

For that reason alone, it would appear very timely that the whole content of the course be reviewed.

Whilst the actual skills chosen would appear appropriate and probably do not need to change, the aspects of each of them which are actually taught should be reviewed.

Similarly, the areas of practice chosen in which to base the skills should be reviewed. For example, in commercial law the transaction chosen is buying and selling a business, which includes consideration of lawyers' use of financial statements, corporate taxation, other business organizations, and considerations in shares vs. asset purchases. Although I have no criticism of these areas as being the contexts to learn commercial law practice, it must be said that there are many that are not included. It is timely to reconsider whether those chosen (and there can only be a few) are the best and most appropriate.

9.1 Lawyering skills

Overall, as far as I can see, skills are taught well, and the skills assessment guides represent considerable experience and expertise, and form an excellent basis for training and assessment at the level required.

The *Content* document states that applicants should learn necessary lawyering skills during PLT, in the three broad categories of intellectual skills, communication skills and case management skills. However, the document recognizes that not all can be learned and so some will need to be selected, choosing these criteria:

- skills that are likely to be encountered by most lawyers after Call
- skills that are not already covered in law school or learned in practice
- skills that can be objectively assessed, and
- skills that can appropriately be developed in the context of transactions.

The skills at present dealt with are advocacy, drafting, writing, interviewing and advising, and negotiation/mediation. As well, research is dealt with by way of a pre-test. These seem to meet the criteria.

The same skills make up the prescribed content of similar courses in England except that negotiation is no longer part of that list. In Australia, at the College of Law, the list is drafting, interviewing and engagement management, advocacy, alternative dispute resolution and legal analysis and research.

I recommend that the lawyering skills to be dealt with be the same as those already taught in the course, except that research be more explicitly incorporated into the program.

Some with whom I consulted observed that the model used for teaching skills is not necessarily a reflection of how it actually happens in practice. This model flows from the Skills Assessments which prescribe what is required for each skill. The so-called PLTC way is seen as artificial. I appreciate this observation, and I think it should be seriously considered. But I also see why there needs to be some consistency in teaching and especially assessment, in order to ensure fairness. The Skills Assessments force a particular pattern, and it does seem inappropriate that a person could "fail" simply not for following a particular way which has been chosen as *the* way. This can be partly dealt with by emphasizing in teaching that there can be other appropriate ways. As well, in the Final Assessment, there might be some further flexibility. How this can be reflected in the assessment guide would need to be considered further.

There is a question of whether the teaching of skills is, in essence, sufficiently demanding of students. An observation by two trainers from Australia suggests that PLTC exercises tend to be less complex, consisting generally of one task, than in Australian courses.[13] Obviously, some early assessments should do just that. But, as part of the redesign, this issue could be considered, so that there is an increasing level of difficulty as the course proceeds.

It has been raised whether students might be introduced to more on the theory of skills. I am not sure that there would be time in the program to deal with this aspect explicitly. Certainly they can be given some limited readings. However, instructors should be up-to-date with thinking on the theory of skills, and reflect that in the underlying approach of their teaching.

9.2 The skill of legal research

As the skill of research is an essential and, to some extent, distinctive aspect of legal practice, and as it is stated to be part of the curriculum,[14] there should be occasions in the course when students are required to research. A mixed message is sent to students as to its value if it is not part of what is required of them as they learn to work as lawyers. In particular, research should be one of the skills assessed in the proposed new Final Assessment (which I will discuss below).

The *Blue Pages* should not deal with it separately, as at present, but in a section which dealt with all skills in the course, including how they are taught and how they are assessed. Research should be listed with the other skills, and a statement made that students will need to undertake some research but there will not be any teaching; however a pre-test will be held, etc.

To enable research to be part of the program, there need to be resources to enable students to engage in research. To avoid the need for access to print materials, I suggest the research be solely computer-based. Indeed, as the CLES materials are increasingly computerized, the research could be confined to them only – but this is not something on which I have a firm view. I will make further suggestions as to how the research might be done in chapter 13 where I deal with the use of computers in the course.

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13 Maxwell & Pastellas, "Stategies for Assessment: the Legal Practice Course Perspective," *Journal of Professional Legal Education* (1992) Vol 12 No2 at 223.

14 see p 7 of the *Blue Pages*

I suggest that the existing pre-test should continue. However, I note that there is not much emphasis in it on computer-based research, and yet it is very much at the core of legal research today. The PLTC should always be seeking to reflect contemporary legal practice and so, if for no other reason, the test should include some questions which would require computer-based researching.

9.3 Law practice skills

One of the assumptions which I was asked to adopt in undertaking the re-visioning is that practice management should have significantly greater coverage.

The *Content* document states that students should learn necessary law practice skills in PLT. Again it recognizes that not all can be taught and suggests there should be practice skills that:

- are critical to the operation of any law practice
- are likely to be encountered by most lawyers after Call
- span a wide range of practice areas as opposed to a single area of law
- are used in exemplary law practices
- are not better learned after Call.

The law practice skills in the *Content* document break into two groups – those relating to managing clients and self, and those related to managing a law office and law firm finances.

I recommend that only law practice skills relating to the management of clients and self should form part of the curriculum of the PLTC, and that those relating to law offices and law firm finances should be dealt with after Call.

This would be in a new program forming part of The Professional Triennium, which I will discuss in chapter 15.

I have not carefully examined the content of the existing segments dealing with Law Office Management. It would be appropriate, in the redesign process, to review them in the light of the *Content* document to see if they meet all of the objectives set out in it. As well, it would be necessary to consider how they would be dealt with differently in the context of solicitors' work and barristers' work.

Some students leave the course and after Call commence sole practice. I think it would be unrealistic to expect that the course could prepare students for this kind of work. Rather, it is really up to the Law Society to insist on further training, perhaps by way of mandatory CLE, for such people.

There remains, however, the question of how the coverage of practice management can be increased significantly. I suggest this be done largely by specifically integrating practice management issues into the instruction, exercises and assessments.

I will be recommending later in this report that each instructor be given primary responsibility for one of the skills in the course, and secondary responsibility for one other.

I recommend that an instructor be given specific responsibility for the law practice skills relating to the management of clients and self. The instructor with that responsibility would be given the task of designing components to be slotted into the course. Each component would both integrate into the section of the course in which it was placed, but would also add up to a whole program of learning in law practice management.

It is hard to envisage how some of the skills listed in the *Content* document could be taught other than by exhortation. Examples, from the document, are "to be accessible to clients" and "to be flexible and able to manage or adjust to change." I cannot envisage a component in an exercise or assessment which could deal with these other than in a patently artificial way.

However, other law practice skills listed are "to properly identify and avoid conflicts of interest" and "to obtain clients' approval before providing services." Both of these could be dealt with in an inventive way.

This is always a difficult part of a PLT course to teach. Some PLT courses have attempted to use extended simulation, whereby students conduct themselves during the course as if they were a law office (keeping appropriate records). This has not always proved successful, despite its initial attractiveness.

I note, in passing, that the skill of keeping files, to the extent that it is mentioned, is listed under managing a law office. However, I suggest it is also a task for the lawyers as they manage themselves, not just the filing clerk. The skill of keeping a diary and in particular having a system to note ahead key points in transactions is not included in the lists: again, I suggest, an important law practice skill. There may be others. Thus, I suggest, that the *Content* document should not be the pro forma for identifying the elements of the law practice management section of the course.

There are some materials on law practice management in the *Practice Material* but they are, I think, somewhat limited. The CLES publishes *Managing Your Law Firm*. I have looked at it cursorily. It might form the basic "text" for this aspect of the course although I suggest that, as part of the redesign process, there should be a widespread study of the increasing literature in this area.

The *Content* document also lists personal characteristics which are important components of the competent lawyers. Whilst I do not believe the PLTC could be given the responsibility of teaching those characteristics, it could well, and especially in regard to law practice skills, reiterate and emphasize them as being essential characteristics – the absence of which will undermine any law practice skills lawyers might have.

9.4 Legal knowledge (framework and transaction-based)

My impression is that there is a substantial amount of substantive and procedural law included in the PLTC curriculum. The *Practice Material* covers ten substantive areas of law, and much of it is tested at the end of the course.

Framework substantive knowledge and framework procedural knowledge should be part of the course. But, as the *Content* document says, only as necessary for applicants to learns skills and transactions. The distinction between these forms of knowledge and transaction-based knowledge will not always be

clear-cut.[15] The *Content* document says it is essentially more specific procedural law combined with practical practice advice. Whilst it may be difficult to draw fine distinctions in particular situations, over time and with effort it should be possible to identify the two broad categories, recognizing that some knowledge will fall into the grey area in between. To the extent that knowledge in this area needs to be dealt with in a particular aspect of the course, it should be so dealt with.

So far as transaction-based knowledge is concerned, again the *Content* document recognizes that every possible transaction cannot be taught. The criteria to be used to decide which transactions to include are:

- transactions that are likely to be encountered my most lawyers after Call
- transactions that make use of a range of lawyering skills, and
- transactions that cover a wider range of knowledge and ethical concerns.

If the decision is made to divide the course into two broad areas, solicitors' work and barristers' work, then there should be some close examination as to whether the existing transactions should continue to be included. At face value, they certainly appear to be good vehicles for learning, and meet the criteria set out above.

I am not so certain about the other areas – builders' liens, collections, etc. As the two major modules are redesigned, these additional areas should be carefully reconsidered as to whether they are the most appropriate. Consideration should also be given as to whether they best stand outside transactions or might appropriately be dealt with in the context of one.[16] For example, the treatment of financial statements might be integrated into the buy/sell of a business transaction insofar as the financial statements of that business might be the basis for instruction in this area.

The reality is that the substantive subjects in the course have remained largely unchanged over the last 12 years. A thorough review of the areas chosen should be made to ensure that every moment is being used to its best advantage, and areas are not being covered simply because that is how it has been in the past.

I understand that the principal role of guest instructors is to outline the substantive law and procedure in the particular area being covered. Under my proposed new model of lawyering, bringing substantive knowledge, skills and attitude together, what the guest instructors should teach may need to be re-examined. If the Qualification Examination does not sit at the end of the course, there may need to be a greater emphasis on integrating the substantive law and procedure into the lawyering task being taught at the time. On the other hand, the guest instructor's role could remain as it is focussed on the substantive law and procedure, with the instructor's role being its integration into the task at hand.

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15 A trial exercise to categorize some specific instances using the classification of legal knowledge in the *Content* document was found to be not always easy or straightforward.

16 As, I believe, the collections segment is dealt with – sometimes being used as the basis for the Interviewing assessment. It may be that they could be further incorporated, either into a transaction or as part of the Final Assessment.

9.5 Professional attitude

The *Content* document concludes that ethical training should be in the context of transactions, and include identifying and solving different types of ethical dilemmas. I support this.

However there is the question of students' knowledge of the Law Society Rules and the *Professional Conduct Handbook*. As this is the law which will specifically govern them as practising lawyers, there is a question of whether they should be specifically instructed in this law, in addition to dealing with ethical issues as they arise.

The skills assessments generally have a criterion, under "Content," which asks if the student identified and dealt properly with ethical issues. I suggest that "Professional Attitude" be made a section in its own right in all skills assessments and that some (but not necessarily all) fact patterns have an ethical issue built in. Students would not be failed on the particular skill simply for "failing" that section of the assessment, but their marks in the "Professional Attitude" section of each skills assessment would be added together overall for the course, and they would need to pass it overall.

As well, the proposed Final Assessment should have a professional attitude element – I will discuss this in chapter 12.

The Law Society is committed to lawyers being aware of multicultural and disability issues, and being able to deal with them. One of the sub-criteria under the "Professional Attitude" section in the skills assessments could be in regard to these. As well, there might be built in a process in one or more of the transactions whereby students had to identify and try to deal with such an issue. An example might be of a client needing an interpreter. Students could be directed to consulting the CBA *B.C. Lawyers Directory* to find the name of an interpreter in the town where the client is situated (see p. 131 of the latest *Directory*).

10 An element for re-visioning: achieving greater flexibility and choice

My experience is that law graduates often find PLT courses quite inflexible. Unlike law school, and perhaps much of the rest of their lives, control of what they do in the course is largely taken out of their hands. Some find this difficult and a reversion to their school days. Terms like "kindergarten" are used to describe it.

Insofar as it is administratively possible, I suggest that, in the redesign, opportunities for flexibility and choice be sought and included. Some students have set their sights very much on practising "people's law" and others on "commercial law." To respond to this, in the assignments (which are not assessable) students could have a choice between matters where the client is a person or is a business. Thus, some might develop their drafting skills in the context of a neighbourhood dispute, whereas others could do so in the context of a business deal.

As well, instances of flexibility such as this in the profession's own training course would be a statement of the profession's readiness to value and accommodate diversity in the profession.

Some students (perhaps the majority) may wish to experience both types of legal practice, and they can choose from either type of fact situation.

It would probably be best not to extend this choice to the skills assessments, although this could be considered at a later date.

Another instance of flexibility and choice is the proposal to enable students to undertake the course either in a ten-week session or in four modules of several weeks each spread out over their articling year.

Section D

Learning and assessment methods

11 Learning methods

11.1 The teaching/learning model

The approach to teaching skills in the course follows a model which is described as being "tiered."[17] As an example, teaching the writing of an opinion letter involves:

- discussing opinion letters with students in the classroom setting (the instructor teaches)
- students writing a letter and later analyzing it in the classroom (the instructor facilitates)
- students writing an opinion letter on which the instructor provides feedback (the instructor mentors)
- students writing an opinion letter which would be graded by an instructor (the instructor assesses).

This model is a very appropriate one. I have not checked whether it is, in fact, consciously or unconsciously followed in the skills teaching, although a cursory examination suggests that it is. It would, however, be useful, as part of the review process, to clarify and restate the model adopted in the course to enable learning (such as the one set out above). As part of that review, some research of other models should be undertaken. I am not suggested that the model described above is not appropriate, or indeed the best, but that there would be value in more consciously using a model and in checking that it represented current best practice in skills teaching.

The *Blue Pages* state that each skill is put into the context of one subject area and one file. In some skills two files are used. The typical file opens with discussion of substantive and procedural issues and then moves to skills work, integration of skill and knowledge, and assessment of performance. The Skills Guides are used both as a basis of teaching and assessment.

Learning methods used in the course include:

- lectures in the big hall, often by a guest instructor
- discussions in classrooms, led by the instructor
- reading, both in preparation and during classroom time
- analysis of materials provided, such as files, legal documents
- undertaking assignments and receiving feedback on their work, such as drafting or advocacy
- working on parts of files
- undertaking some of this work by working in small groups

Thus there is, what is called, formative assessment throughout the course whereby students receive feedback and some indication of the standard of their work.

[17] Maxwell & Pastellas, 1992, at pp. 229-30.

By way of comparison, the teaching methods used at the College of Law in England are described as follows:

> *Typically, advance preparation and preliminary reading provide an introduction to each given topic. The large group session then provides further guidance, enabling you to apply your legal knowledge by the use of case studies and associated legal problems. The topic is taken a stage further by homework exercises and further reading or research. A workshop, held a day or so later, completes your study of the topic and gives you a chance to practise your legal skills through role-plays and problem solving.*
>
> *Case studies are used to illustrate both procedure and the application of law, giving you the opportunity to integrate practical skills with legal knowledge.*

This sounds very much like the British Columbia method.

At the College of Law in Sydney the teaching strategies include small group discussions, lectures, simulations, role plays, file reviews and feedback sessions, individual problem-based research, discussions and interaction with visiting instructors, team and individual projects and assignments, and writing and drafting assignments. Again, the methods are largely the same as those in the PLTC.

I heard little criticism of the mix of learning methods used, except that the small group exercises were not always treated by students as being particularly useful or serious. But there has to be a mix of methods, and small group exercises are certainly quite appropriate. I do not suggest that the current mix change.

In the past, what is known as problem-based learning has been considered as appropriate for the course. There is not scope to consider this educational method in depth here. However, it is important to note that it is more than simply requiring to deal with problems. Problem-based learning is more than "X contracted with Y as follows …. . Y has now failed to fulfil the contract as follows, …. . Advise X." Problem-based learning starts with a, usually quite, complex problem and students are required to solve it. The problem *precedes* instruction. Thus students themselves need to find out what they need to learn and then go on to learn it, and then solve or deal with the problem. It is a very enticing educational method, but I seriously question its applicability to a course of only ten weeks. It can very often be a very time-consuming learning method, and an inefficient one. There is a common view now that it is not appropriate for initial instruction.

However, my recommendations in regard to the new Final Assessment very much flow from the problem-based learning methodology, and is at that point in the course that I think it can be appropriately used.

11.2 Demonstrations

One learning method which might possibly be used more is demonstrations. In the skills areas, there are some demonstrations on videotape to illustrate how a particular skill, such as interviewing and advising, or advocacy, might be carried out. A full interview or a prolonged cross-examination, of say 45 minutes, becomes boring for students and contains too many aspects for them to take in. A few live demonstrations of the few main things which need to be learned, not the whole process, might be a useful addition.

11.3 Transactions

Teaching by transactions involves using a fact pattern that might arise in a typical file in the area. The lesson plans are then designed to lead the students step by step through the file as they would in a real transaction. The transaction file shows the students how substantive and procedural knowledge is combined with skills to solve a problem for a client.

The course is quite short so there cannot be too many transactions. At present the transactions are residential conveyance, civil trial, criminal trial, buying and selling a business and family law (separation and divorce). As part of the redesign a check should be made whether, given the limited time, these are the best transactions to use, in themselves as common transactions and as vehicles for instruction. On their face it would be hard to argue against any of them, but the review would still be worthwhile.

I do not suggest that the emphasis in the course shift to transactions and away from skills – rather the contrary. But it might be possible for some of the areas which are taught at present individually, rather than in the context of transactions, could be incorporated into a transaction – either these or new ones. There is value in this so that, as part of their understanding of lawyering, students can understand better that matters have a flow, and that the management of that flow is an essential part of the art of lawyering. I suggest that in both the barristers' work and solicitors' work modules there should be at least one transaction which runs through from initial instruction to closing of the file.

It was pointed out to me that, even in articling, a student may not see a transaction as a whole, and so it is very useful to see a few as a whole process.

11.4 Feedback

In the third week of the course, the instructors discuss the importance and purpose of feedback. The students receive materials that give tips about how to give feedback to their colleagues. The students give feedback to each other in a number of exercises. The most important feedback comes from the instructors. The students receive some limited (because of numbers) comments during in-class exercises from the instructors. However, the major feedback comes on the final assignment. In each skill the final assignment is in the same form and of the same difficulty level as the assessment. The students all receive one-on-one detailed feedback from their instructor in that final assignment.

All those involved in PLT courses, either as instructors or students, would agree that feedback is a vitally important part of learning. This is especially so where the student is learning something essentially new, such as the skill of advocacy, or is attempting to integrate knowledge, skills and attitude into the act of lawyering.

Once the student enters the workplace, as an articling student or as a junior lawyer, it will often be very difficult to receive feedback. Articled clerks and junior lawyers often bemoan the difficulty they have to gain access to senior lawyers to seek their advice and comments on their work. So, the PLTC is a major opportunity, immediately before work, to provide feedback in an explicit and detailed way. Its value as a means of enabling learning is immense.

Probably the main reason why detailed and specific feedback is not always given to students in PLT courses is the time involved, on the instructor's part, in giving that feedback. Essentially, this involves either meeting with the student and discussing the student's piece of work, or writing notes for the student.

And yet feedback is an essential element of ensuring deep learning. The provision of feedback to students should be seen as a core element of the teaching process, not simply some after-the-event comments which might be useful.

I therefore recommend that the provision of feedback should continue to be an essential element of the learning process in the course, and time should be consciously built into the timetable to ensure this.

Feedback should be more explicitly highlighted as a feature of the PLTC.[18] A reference to it should be in the *Blue Pages*, mentioning its centrality, importance and how it works.

To facilitate the provision of feedback, a distinctive feature for the PLTC might be a system of audiotape feedback be introduced.

If this were done, instructors would provide feedback, particularly on written assignments (but it could also be on videotaped work) by means of audiotapes. By being able to talk onto the tape (compared to writing notes in the margin of submitted work or in one-to-one interviews), instructors can provide more personalised feedback, more detailed feedback (as it is much quicker to talk than to write), perhaps less cryptic feedback, and, as a result, more helpful feedback.

All students would need to listen to their tapes. I suspect most students have a way to do that through walkmans etc, but some machines may need to be set up at the PLTC. Instructors would, of course, need tape recording machines.

I discuss this again when I consider technology, in chapter 13.

11.5 The Skills Guides

The Skills Guides are a feature of the PLTC and indeed they have been "copied" and become the basis of similar approaches to instruction in a number of other PLT courses throughout the world.

I support their continued use, although there might be value, from time to time, in reviewing them, in conjunction with a panel of lawyers, to check if they need any improvement.

I was told by some that the PLTC tended to require that, in assessments, students followed "the PLTC way." There tended to be a correct way to write or interview or whatever, and a student was assessed more on whether they could adopt the correct way, so far as PLTC was concerned, rather than whether the particular skill effectively fulfilled what was required, including what the client required. One former student described this as "stickiness" which required exact use of the template rather than actual ability.

[18] Perhaps a distinguishing feature of the PLTC, compared to other such courses, could be its assertion that it places a high emphasis on feedback, and that it has systems in place which demonstrate that this is not a mere catchphrase.

I can understand this criticism, and there is certainly some merit in it. However, I think that it needs to be borne in mind that there has to be a "correct way" if assessments are to be as objective as possible and thus ensure an even approach across the whole student body. As well, at this stage in their careers, students are being assessed whether they can perform a skill, in one acceptable way, not whether they can perform the skill with the whole range of nuances and variations that an experienced lawyer would use.

Having said this, there are certain safeguards that can help to ensure that a student is not "tripped up" by simply not following the accepted way even where that student has performed in a way that would be accepted in practice. The safeguards include:

- ensuring that the skills guides do reflect an acceptable way, through regular review and revision
- building into the system some flexibility through moderation of marks, *eg* by taking into account performance in the same skill in the other module
- the existing re-marking system.

11.6 The use of guest instructors

Guest instructors play an important role in the course. I envisage that they will continue to be a major means of instruction.

There seems to be a good system for their recruitment, briefing and organization. There does not appear to be any specific evaluation of their performance from time to time. There would be value in meeting with them occasionally, individually and as a group. This gathering could be used to acknowledge their central role, to brief them on the course's evolving approach to training, perhaps to give some subtle instruction on lecturing techniques, and to ensure as far as possible that all guest instructors have a consistent understanding of their role.

As indicated above, with the introduction of an entrance examination, guest instructors will need to focus more on the whole lawyering process and perhaps less on substantive law and procedural law – although I am not saying they should not deal with these aspects, which remain at the core of lawyering. The briefing notes may need to change accordingly also.

11.7 Keeping the course as practical as possible

It is possible that the Qualification Examinations may be playing some indirect role in fashioning the learning methods. An awareness of the need to prepare for the examination, which involves knowledge of substantive law and procedure, may be resulting in undue emphasis in the course on substantive procedural knowledge at the expense of actual know-how.

For example, a former student pointed out to me that, whilst the *Personal Property Security Act* is dealt with in Commercial Law, and there is discussion of security interests and priorities and how they attach to goods, students never actually undertake a (simulated) search, nor are taught how to interpret a search or how to discharge a security. Another example is that, whilst corporate governance is discussed, students are not required to draft a resolution or minutes of a company meeting.

These two examples suggest that there needs to be less emphasis on knowledge (which the impending examination would tend to keep at the fore) and a greater emphasis on lawyering – the know-how of legal work, which brings that knowledge together with skills and attitudes.

12 Assessment methods

I have already discussed the question of an Entrance Examination in chapter 5.

12.1 Qualification Examinations

As I have indicated already, my sense is that the Qualification Examinations loom over the course, and have a dominance which seems to me to be out of proportion to the role they should play. A number of people with whom I consulted spoke of how stressful they were for some, both students and professional staff of the PLTC.

This seems to be for several reasons. They are the very last examinations that students may do in their whole life. The amount of coverage is very broad. Coming at the very end of a long period of preparation, students do not want to have to go back and do them again – they want to get through this last hoop. Students seem to see them as the culmination of the course and place considerable emphasis on them. The anxiety does not seem to be because they are perceived as unfair or too demanding.

The pressure to fashion instruction in the course to enable students to best prepare for them seems inevitable. Being called "examinations," students approach them in the same way as they approached law school examinations.

Yet, whilst they come at the conclusion of the PLTC, they do not essentially draw together all of what the course is about – lawyering. Rather they test some aspects – an "understanding of substantive law, procedure and practice methodology" as well as the ability to apply legal reasoning to that knowledge (*Blue Pages* p. 14).

To remove the Qualification Examinations from the course would change its psychology; they would no longer drive the course.

If it were decided that there be an Entrance Examination, then I recommend that the Qualification Examinations be abolished. If it were decided to retain an examination which was similar in its purpose and content to the existing Qualifying Examinations, then I recommend that it be held outside the ten weeks of the course and not immediately after it.

This is not to say there would not be assessment of legal knowledge in the course, as discussed below.

12.2 Pre-tests and challenging parts of the course

The existing pre-test in research appears to work quite well, and I suggest that it remain and be conducted as at present. The use of Legal Research Exercises for those who do not write it or fail it seems to be a good system.

It has been suggested that there might be pre-tests in regard to other parts of the course, thus enabling some students to "challenge" and be exempted from one or more parts of the course. In support of this

it could be said that a number of students come with clinical experience from their law degree. At UVic many students undertake a full semester in a clinical course, in areas such as criminal law or environmental law. The Faculty is just establishing a business law clinic also. As well, at UVic 30 students each year take their degree by the cooperative program, which means that they spend a total of 12 months in work whilst undertaking their degree. Thus between 15 and 20 of those coming into the PLTC from UVic will have undertaken the cooperative course. There are also some courses which are practical in nature, such as the Advocacy course at UVic.

The question arises as to whether any credit should be given to students who have undertaken these courses, or some acknowledgment of this work experience.

I do not support this approach. The course is relatively short. I cannot imagine that the exempted students could make much use of the time they had freed up. It would make interactions between students very difficult to organize (as students would be coming in and out of the course) and generally it would add logistical difficulties.

But, above all, the course is about bringing knowledge, skills and professional attitude together into the overall concept of lawyering. I can see negative pedagogical outcomes if the course were to allow students to tease it apart. Indeed, it would be quite difficult to implement this if the proposed modularization is adopted. I cannot see how students could seek an exemption for a whole module because so much is integrated into the one module – knowledge, skills and attitude.

12.3 Assessments at the end of each module

At the moment, apart from the advocacy assessment, all assessment takes place at the end of the course. I do not think that assessment should be taking place throughout all the course. This has a negative effect on students. But there is room, I think, for skills assessments to take place at the end of each major module. This also enables some, at least, of the skills to be assessed more than once. These assessments would be similar to the present skills assessments.

I suggest that the end-of-module assessments should also include some assessment of legal knowledge, particularly transaction-based knowledge.

I recommend therefore that there be assessments at the end of the two major modules – Solicitors' Work and Barristers' Work. The form of each assessment would be one or two skills assessments, as at present, and a short examination (no more than about one hour in length) testing the ability to apply legal knowledge appropriately in the course of a transaction.

One result of this would be that a skill, *eg* writing, might be assessed twice – in each end-of-module assessment, as well, of course, in the Final Assessment.

A break of a few days would be necessary at the end of the Solicitors' Work modules (assuming they were the first modules timetabled) to enable marking and dealing with students who failed.

Students who failed the Solicitors' Work major module could continue on to the Barristers' Work modules, but would be aware that they would either have to undertake remedial work and further assessment (probably not during the Barristers' Work module but after it had been completed) or retake the whole module or one of the sub-modules again in a later session.

This raises the issue of providing results to students during the course. The present practice is not to provide the result on the existing mid-course assessment, Advocacy, until the end. The reason for this is, I understand, that when results were released several years ago some students who had failed were "thrown" by their failure and it affected their performance during the rest of the course. I can appreciate that this could be a difficulty for some, but I suggest this might be a case of the interests of a small minority governing the majority. If systems can be developed whereby a poor result can be "moderated up" through improved later performance, affected students know that they can do something to improve their position – all is not lost.

Another issue is an administrative one. A small number of students may, as a result, be required to withdraw from a session and will need to re-enter a later session at the beginning of a particular major module or sub-module. I can see that this could create some difficulties; however, I suggest it will always only involve a very small number and it should be possible to build in some flexibility in administrative arrangements to permit some differences in student numbers in various segments. Administrative staff will need to be supported as they establish systems to deal with this problem.

12.4 The Final Assessment

I recommend that there be a Final Assessment.

Having completed both major modules, a student would then be eligible to undertake the Final Assessment. This would take place in the 10th week of the session, as at present. A student who had failed both the Solicitors' Work and Barristers' Work major modules could not attempt the Final Assessment. A student who had failed only one of the major modules might, at the Director's discretion, be able to undertake the Final Assessment – but would, of course, still need to undertake remedial work or the module itself again.[19]

The Final Assessment would attempt to bring together as many elements of the course as possible in order to test, as best as can be done, lawyering. As an example, the existing interviewing assessment (which is a good one) could be the first stage of the assessment. Students would then need to identify the problems to be dealt with and the legal issues involved. This might lead them to the need to undertake some research. Following this, they would then need to undertake some writing or drafting. This might be an affidavit or contract[20] or some other document, or a letter to the other side setting out the client's position and proposing certain things.

A final segment (if it is logistically possible to incorporate it) would be a meeting, in the nature of a viva, with a panel, comprising an instructor and a legal practitioner, at which students would present the results of their work and their advice on what they proposed for the client.

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19 I appreciate this could create the odd situation of a student having passed the Final Assessment and repeating one of the modules or sub-modules. This may need further consideration, perhaps in the light of experience of attempting to implement it.

20 It may not be necessary for the whole affidavit or contract to be drafted – perhaps just the parts which are "vital" might be required, such as several special conditions to cover the aspects which are specific and central to the matter.

If this last segment were to be included in the Final Assessment, either from its implementation or as an element to be added once the new system had been "bedded down," the decision of the instructor would prevail as to whether the work was satisfactory or not, should there be a conflict in view between the instructor and the legal practitioner.

As discussed above, this approach to assessment would involve some aspects of problem-based learning, which is an approach previously considered for the course. It would, quite explicitly, attempt to test at a more sophisticated level, and that students were able to bring together the elements of legal knowledge, lawyering skills, and professional attitude. It might be difficult to test most law practice skills as part of the Final Assessment.

12.5 Possible policies in regard to the end-of-module and final assessments

I have not had time to develop detailed and fully thought-through policies for the assessments at the end of modules, but some suggestions are:

- the pass marks would be as at present
- students would be given a numerical mark for each module, not a pass/fail mark
- a student who passed both the skills assessment/s and the legal knowledge test at the end of a major module could move onto the next major module (if applicable) or the Final Assessment, as applicable
- a student who passed the skills assessment/s or the legal knowledge test, but not both, could generally move onto the next major module if the actual mark was not more than say 10% below the required pass mark, but would be required to undertake some remedial work
- a student who failed both could not generally move onto the next major module
- a student who had failed one aspect, but not both aspects, of assessment in the module immediately before the Final Assessment could generally be permitted to undertake the Final Assessment.

In regard to the Final Assessment:

- a guide to assist students and specify what is required, similar to the skills guides, would be prepared
- the guide would be broken into the major categories of legal knowledge, lawyering skills and professional attitude, with sub-categories under each, as in the existing guides
- one of the lawyering skills to be assessed would be research, but there would, of course, be others
- students would need to pass in each of the three categories, but a conceded pass could be permitted in one of the categories if the student had passed overall in that category in the end-of-module assessments.

13 Materials and the use of technology

13.1 Materials used in the PLTC

The major materials used in the PLTC are the *Practice Material* (3 volumes), the *Activity Manual* and the *Statutory Material*. The *Practice Material* is a blend of precedents and forms, commentary on procedural and substantive law, and checklists. There are also handouts provided during class, the Law Society's *Members' Manual* and the *Practice Checklists Manual*. The handouts are sometimes provided by guest instructors and students often find them useful as they frequently include checklists and precedents. Textbooks on advocacy, interviewing and negotiation are available for those who wish to refer to them.

Instructors are provided with Instructors' Materials.

I was told that the *Practice Material* was originally intended to be a quick update in order to provide a context into which the skills could be imbedded. But their scope and quantity have grown over time until they are now very significant.

Although not used in the course there is, as well, a wide range of materials published by the CLES, particularly practice manuals, annotated statutes and annotated precedents. The practice manuals deal with company law, the Personal Property Security Act, family law, motor vehicle accident claims, real estate development, land title, mortgages, real estate, and probate & estate administration. There are also other publications which appear possibly relevant, such as the *Annotated Wills Precedents* and the *Commercial Leasing Annotated Precedents*.

I was told that generally the CLES practice manuals are too "advanced" for the PLTC, to the extent that they cover areas dealt with in the PLTC. It was said that they are written to a different level, provide more detail and depth and deal with more complex matters. Hence the use of the *Practice Material* as the basis for instruction in the PLTC.

Sometimes both have the same authors. For example, the *Company Law Practice Manual* is authored by the same people who write the sections on company law for the *Practice Material*.

However, I cannot help but think that there must be significant overlap and double work in some areas. An example is in the area of conveyancing. Both the *Practice Material* and the practice manuals include, for instance, step-by-step guides and precedents. It seems odd that both should be prepared in parallel. As far as I can see, students are not required to read any CLES practice manuals or other publications as part of their preparation for any lessons. There are references to them, in some of the *Practice Material*, but that appears to be in the sections called Further Reading, not generally in the body of the text. PLTC students do not have any easy access to the CLES practice manuals, annotated precedents etc and so these references are probably rarely used and effectively only used by lawyers in practice.

I therefore recommend that:

- *where there is a CLES practice manual for an area dealt with in the course, it should be used as the basic source*
- *the* Practice Material *should be seen as supplementing the practice manuals, not as an alternative*
- *accordingly, in those areas where there is a practice manual, the* Practice Material *should be solely a guide for students through the practice manual, to the extent that is necessary*
- *the* Practice Material *in respect of the remaining areas should be largely as at present.*

There is a great amount of material for students to cover in the ten weeks of the PLTC. Of course, my suggestion could add to the amount of material for students to work through. But if the *Practice Material* were not seen as for use in future practice and solely for the course, they could be more focussed and thus shorter, leaving the CLES practice manuals as the resource for the use in practice later.

I realize that students regard the *Practice Material* as very useful because they can use them in later practice, but it seems odd that the one organization should publish, without any specific interrelation, two publications serving basically the same purpose. If, during the course, students became familiar with, and developed the capacity to find their way around, the practice manuals reasonably effortlessly, they would be well equipped to use them in later practice.

There is the question of what resources would be provided to those law graduates intending to undertake the proposed entrance examination, should it be introduced. If it were to test what should have been learned at law school, then materials similar to those prepared in Nova Scotia would, presumably, need to be prepared. This probably should be a separate publication, as its categories would be different to those in the *Practice Material*. The cost of compiling and updating them is a daunting prospect. If, however, the examination were seen as covering more practice oriented legal knowledge, then the existing *Practice Material* might continue to be used for that purpose. Until the purpose and content of the examination is clearer, I am not able to provide further advice.

In summary, therefore, and assuming the *Practice Material* were not to be used as a resource for those preparing for an entrance examination, I see the *Practice Material* being reconceptualized so that it served two purposes. One purpose would be to provide material which was necessary for the course but could not be found in the practice manuals or other CLES publications. The other purpose would be to provide material which guided students through other resources, particularly the practice manuals, where those other materials were too complex or detailed.

To achieve this reconceptualization, authors could, over time, be asked to rewrite their segments.
As the *Practice Material* is to be more closely defined as to its purpose and focus, guidelines for contributors should be prepared to ensure, as far as possible, consistency in approach, both in rewriting or preparing new material.

Instruction in the course would continue to rely on the *Practice Material* but would also use the practice manuals where they covered areas in which tuition was being provided.

This raises the question of how the CLES material would be provided to PLTC instructors and students. I suggest that all PLTC instructors should be provided with a copy of all relevant practice manuals and other relevant CLES materials such as annotated statutes, either in their individual rooms or in the

instructors' library. As well, for students, several sets could be placed in each of the classrooms or in a central small library or resource centre. Students would not be provided with individual copies.

One interesting aspect of the CLES materials is the precedents on disc which are part of many, or perhaps all, the manuals. I will deal with this in the next section.

One small idea is to give to each student, on commencement, a copy of the CLE *Catalogue* so that they are aware of what is available.

13.2 The use of technology in the course

I have been asked to consider the use of computer technology in the course. One of the assumptions I have been asked to proceed on is that some part of the course will use computer or web-based technology.

First, I make the observation that, in undertaking the course as presently constructed, students do not need to use technology, except to the extent that they may use their own computers to type up assignments and assessable work. Yet, many of the students would have come to the course from law schools where technology is increasingly being used for communication, research and wordprocessing. For example, I was shown by Dean David Cohen the 150 terminal points at the Faculty of Law at UVic, in the library and elsewhere, where students can plug in their own computers and go onto the law school's network and search and research in a range of databases. As well, communication with students generally is by email, and students can communicate with their teachers by email. There is a computer laboratory at the law school. Although perhaps not as advanced, students at the UBC, also use computers particularly for research.

Thus, when they come to the PLTC they step back, as it were, in the level of sophistication available for research, communication and wordprocessing.

When they leave the course, students will enter a profession which is increasingly based on computers – again for research, communication, document transfer and wordprocessing. In addition, the legal work itself may involve new areas such as electronic commerce.

For these reasons alone, there would seem to be a strategic imperative to make the course more technologically based. As well, there can be educational advantages.

My recommendation is that the course consciously move to being one that uses computer technology in an advanced way, and in particular:

- *students should be encouraged to communicate, if necessary, with their instructors by email*[21]
- *students' email addresses should be included in the class lists in the* Blue Pages *and instructors encouraged to communicate with students by email, where appropriate*

[21] Instructors' email addresses are already shown in the *Blue Pages*.

- *there be one or more points in the course where students be required to undertake some fairly straightforward computer-based research (as part of a transaction), as well as in the Final Assessment (the research might be confined to material on the CLES website, thus narrowing the scope and containing cost)*
- *tuition in the skill of drafting should be extended, at one point in the course, to include the use of precedents, and students should be required to access a precedent forming part of a CLES Practice Manual and work with it*
- *in regard to drafting, students should be required at one point to learn the basics of the revising tool in wordprocessing and use it to propose changes to an existing document*
- *all students should be provided with the on-disk table of contents to the Practice Material*
- *consideration should be given to enabling the students to have the choice of doing the Research pre-test in paper form, as at present, or in a computer format, whereby they would receive the test by computer, type in their answers and send the test back to PLTC by computer,* ie *email.*

In order to facilitate this development, some administrative and logistical arrangements will need to be considered. Basically, students will need access to computers to enable this to happen. At the moment, the course does not know the extent to which students have computers or access to computers. As a first step, a questionnaire could be administered when the next session starts to find out how many have laptops, how many have PCs at home, how many have access (during the PLTC) to computers at the office at which they are, or will be, articling, how many have email addresses, how many can carry out basic functions such as wordprocessing, and how many know how to carry out some basic research using computer-accessed databases and/or on the Web.

This will reveal the extent to which the PLTC would need to provide computers to students to enable them to use them in the course, as required. It may well be found that a quite small computer laboratory is all that is necessary, or several networked computers may need to be placed in each of the classrooms.

There may well be a computer laboratory nearby. This might be an alternative to a laboratory at the PLTC.

Liaison with the law schools should take place to check what they will have taught all students in regard to computer-based research.

This, of course, may well have a financial cost – both in acquiring hardware and software and in maintenance and support. I have not attempted to calculate what this may be. I am conscious that an assumption is that the course will be offered within its existing cost of $1.7 million. However, as another assumption is that some part of the course would use computer technology, the assumptions could be mutually self-contradictory.

At the lower end of the scale of technology sophistication, the proposal that feedback be provided to students by audiotape is another use of technology.

The CLES is moving to place more of its material, including courses themselves, on the Web. At a later stage, the PLTC could consider placing some of the material for the course onto the Web, thus opening up considerable opportunities for flexibility in learning. However, this is a future possibility and I do not recommend that that be done at this stage.

14 Whether the course might be undertaken by distance education

I have considered whether the course might usefully be offered by a distance education mode, possibly using web-based delivery.

I did not find any significant groundswell of need for this. Amongst the people with whom I consulted, there was not a desire that this option be available. It appears that students generally either want to undertake the course face-to-face, or have never seriously considered any alternative, or have become used to assembling in a major centre, just as they did at law school, for education and training. One practitioner from outside Vancouver with whom I consulted did not see it as a problem. He noted that students from outside Vancouver are given priority for the session which suits them best.

The course is offered in Victoria once each year, and this seems to meet the needs of those students planning to article on Vancouver Island.

To convert the course into a distance education mode (as an alternative, not a replacement, to the existing full-time course) would be expensive. It would be considerably more expensive if it were to be Web-based.

The College of Law in Sydney has recently developed, what is called, the Electronic Professional Program. I have left with Bill Duncan a booklet which describes it. It is extremely impressive, involving CDRoms, internet, email and discussion group software. However, the cost of development is in excess of $Aus 1 million, and there are, of course, ongoing costs. If the PLTC were to decide eventually that it wished to develop a sophisticated electronic program, it could well be best advised to investigate an arrangement with the College of Law (as to the design, not the content) rather than to develop a course *de novo*.

My proposal that students could opt to undertake the course in four modules, spread out over their articling year, whilst not distance education, would be a means of attaining some of the objectives which distance education also seeks to attain.

Although not “converting” the course to a distance education mode, the provision of feedback, and general contact with students, by means of email would introduce elements of distance education into the present course. Placing the materials, either ther PLTC’s or the CLES’, on the web would also facilitate this. Indeed, this is the way I see training developing – not into either solely face-to-face courses or distance courses, but often courses which contain elements of both.

Section E

The legal education continuum

15 The proposed Professional Triennium

15.1 In outline, what would be involved?

The Professional Triennium (or whatever it may be called) would be a period, of about three years, of structured training opportunities, beginning in articles and continuing on past Call into practice. The PLTC would be the first segment. The PLTC would be a stand-alone program, as at present, but it could also be the first stage of a series of programs which, in total, added up to a far more comprehensive and thorough program of professional preparation.

There would be a range of post-PLTC programs. Those undertaking the Triennium could choose amongst them to form "majors." Majors could be based on lawyering skills, legal practice areas, *eg* conveyancing, or law practice skills.

People could move on to these programs either during the remainder of their articling year, or in the first few years after Call. Although it would be regarded as a total professional development program that could be undertaken in three years, a person could spread it out over a longer period to suit their own requirements and situation. Thus it would not necessarily need to be confined to those in their first two years[22] of practice, although that would be the norm.

The post-PLTC segments of the Triennium would not be mandatory.

A possibility, which I have not explored in any depth, is to work with one or both of the British Columbia law schools and offer an academic credential for completion of the Triennium, perhaps something like a Graduate Diploma or Masters in Legal Practice.

15.2 Why such a concept is valuable

As mentioned above, an assumption upon which I was asked to base my work was that the course must fit within the legal education continuum. Even without this assumption, I would have been recommending that there should be an "articulation" across the line of Call, in order to emphasize, and institutionalize, the reality that the process of professional preparation flows into a period of professional development in practice.

There are a number of reasons for this:

1. it is universally accepted that the process of learning how to practise the profession of a lawyer does not stop with Call but extends on indefinitely into practice

2. a number of the things which a lawyer needs to be able to do are most effectively learned in the context of work: they are ineffectively learned "in advance" and out of context

[22] That is, the first year of the Triennium would be The Articling Year and the remaining two years would be the first two years of practice.

3. there are too many things to be learned, and it is unrealistic to expect that they can be all dealt with, even cursorily, in the PLTC.

There are several factors which suggest this concept is likely to be successful if implemented. British Columbia is in the fortunate position of having the one institution, the CLES, responsible for both PLT and CLE, so that the institutional structure to enable the concept of a Professional Triennium already exists. As well, CLES has already gone a considerable way down the road in the preparation of CLE courses which might make up this Professional Triennium.

During the first few years of practice, many young lawyers are still working out what areas of law they would like to work in. Participation in the Professional Triennium would enable them to have a clearer idea of areas of practice in which they might not be working, and also would give them some training for areas to which they might want to move.

15.3 How participation might be encouraged

In my consultations I gathered that, whilst this concept was seen as very attractive, the reality was that young lawyers often have to work very hard in their first few years of practice, and thus they might not have the time to devote to professional development at the proposed level of intensity. As well, they generally have few funds, and their firms are only willing to provide limited support, for CLE. So the scheme might flounder simply for the reason that young lawyers did not have the time or funds to participate, rather than for its inherent merit.

On the basis that the Triennium would not be compulsory, in order to attract junior lawyers to this professional development program, it would be necessary to offer enticements and encouragements. One possibility would be the establishment of a series of certificates or diplomas by the CLES. The CLES would need to replicate to some extent the degree of care given in educational institutions before such awards are established, including the documentation of standards, assessment methods, etc.

Another is the existing system of CLE credits or insurance premium credits.

However, I suggest that something more than that might be possible, and indeed would be desirable. If the Law Society were to agree, a special designation could be accorded to those who had completed it. For example, in Australia, accountants can practise under the designation "accountant" without anything more. However, some are entitled to use the designation "chartered accountant," which recognizes not that they are senior accountants or specialists, but that they have undertaken a special, more arduous program of professional training or development. Perhaps the designation "chartered" could be used for those barristers and solicitors who had undertaken the Triennium.[23]

Another possibility would be the use of the terms "associate," "member" and "fellow" as in the medical colleges. Perhaps those who had completed the Triennium could be accorded the title of "Fellow of the Law Society."

This would be a matter for the Law Society. The underlying point, however, is that, based on my discussions, I do not think this concept, however worthy it might be seen to be, will succeed unless

[23] Several other professions use the designation "chartered," *eg* surveyors.

there is a real recognition, which counts for something, for those who have put themselves through the process.

This does imply, however, that unlike existing CLE programs, there would be an assessment regime.

An additional way of making the Triennium attractive would be to have a lower registration fee than usual for those in their first two years of practice.

15.4 How the programs for the Professional Triennium might be structured

There are several ways in which the programs for the Triennium might be constructed. I do not have a firm view. So, if this idea is considered further, changes might be necessary as the detail of it is worked through.

Divisions

One structure would be two major divisions – Solicitors' Work and Barristers' Work, as in the PLTC. Within these divisions would be programs, each of which stood alone but also built upon each other. Thus, for example, there could be a conveyancing major comprising three programs – fundamentals, intermediate and advanced. Similarly there could be articulated civil litigation programs, each on an aspect of civil litigation, such as personal injury, and so on.

A person seeking to complete the Professional Triennium would be required to complete two majors, a total of say six programs over the period of the Triennium. Probably a person could choose to undertake both majors in either the Solicitors' or Barristers' Work divisions, or one from each. Lawyering skills, law practice management and professional attitude would be integrated into all the programs. Alternatively, they could be majors in themselves, although present experience suggests there is less enthusiasm for such courses and thus skills, for example, might be better development in context.

The criteria to be used for deciding what areas of work might be the basis for a major might be:

- the volume of work which takes place in that area, in dollar terms or number of transactions (assuming that could be measured in some way)
- the extent of risk in practising in that area
- the history of complaints by clients in regard to work done in that area
- the availability of CLES practice manuals and other materials, to form the "textbook" for the courses to be conducted in that major, and
- whether the area provides a good framework for teaching skills, professional attitude and, perhaps, law practice skills.

Law practice skills

Another structure would be as above but with a third division dealing with law practice skills. This, I think, would be the better choice. Although law practice skills would be built into all of the programs within the Solicitors' Work and Barristers' Work divisions, there could also be a third division dealing solely with law practice skills.

An advantage of this is that it would provide a series of programs which PLTC students would have, potentially, ahead of them dealing with this most important aspect of lawyering. One of the assumptions for my review is that practice management should have significantly greater coverage. I find it somewhat hard to envisage how the PLTC itself could deal with two of the areas listed in the *Content* document – managing a law office and managing law firm finances. However, these topics would be ideal for coverage in the Triennium, as participants would then have real-life experience of these matters and practical problems to deal with, thus heightening their ability and readiness to learn.

A basis for the programs in this division could be the manual *Managing Your Law Firm*. It provides both a structure for these programs and resource materials

The existing interesting and valuable range of CLE programs dealing with technology could be articulated into a major within this division.

15.5 The implementation of this proposal

I suggest that the responsibility for the programs forming the Triennium should rest with the Education Department of the CLES. It is already part way down the road to this in its development of workshops and of certificate courses. What I am proposing really reflects a development already occurring but takes it a step further.

However, there should be close, structured cooperation between the Education Department and the PTLC. Instructors should be involved, particularly in the development and perhaps in the teaching of most, if not all, of the programs that will need to be developed. Of course, practitioners will also be involved in all of them as well.

Teaching techniques and assessment methods used in the PLTC might be translated, perhaps with some adaptation, to the new programs.

My proposal in regard to governance, in the next section of this report, will be that any new board or governing body have responsibility not just for the PLTC but for all educational programs in the Professional Triennium.

Some programs already exist, and would need only fairly minor adaptation to fit into the concept of majors – one building on the other.

The materials for these programs should, usually, be the CLES practice manuals, annotated precedents and annotated statutes. They are an excellent resource, and should be the ideal major resource for most if not all of the programs.

As the Triennium is seen to be beginning in the PLTC, this is another reason why the practice manuals should be more consciously used in the PTLC.

A problem would be how those outside Vancouver could participate. I can see no obvious solution to this.

Section F

Implementation: staffing, ongoing review, management and governance

16 Professional and other staff

An essential element for the success of any PLT program is the quality of its staff. The PLTC is fortunate that its professional and support staff is an impressive group. They appear to be very committed to the course with, in most cases, long experience and skill at teaching and administering. I suspect that one reason there is so little criticism of the course, from students, former students and the profession, is that it is run so smoothly.

Both the Law Society and the CLES wish to have an arrangement for delivering the PLTC in which the Law Society's requirements of what the course will produce were clearly understood, but it would be up to the PLTC to use its educational expertise to decide how best to deliver the course to meet those expectations. There is a fine balance between the Law Society's need for accountability and responsibility and the CLES's need for flexibility in delivering the course. The roles of the PLTC Director and staff need to considered in this context.

16.1 Professional development

But this is not to say that staff should not be constantly in a process of professional development, for their own sakes but particularly for the sake of the course. Instructors, in particular, are the most important asset of the PLTC. That asset needs to be looked after.

Some examples of how this might be done are:

Annual work plans

First, each member of staff should have an annual work plan, which indicates what they particularly hope to achieve during that year. This would often include opportunities for professional development. In the case of an instructor that might mean taking a course in teaching skills, to upgrade legal knowledge, to attend a conference and hopefully present a paper, or to improve computer skills, and so on. This plan would be settled in conjunction with the Director. It would need to be realistic, from both the staff member's and the PLTC's points of views.

The plan would be reviewed half way through the year and at the end, to assess how well it was being attained. This would be a two way review – a review by the PLTC of the staff member's "progress" but also an opportunity for the staff member to express criticism, to seek help or air views.

This proposal extends to non-instructing professional staff and to support staff.

Generally, there should be systems for staff to be briefed, to express views, make suggestions and criticisms. There should be regular staff meetings, and there should be an annual meeting between staff as a whole, and each one generally, with the CLES Executive Director.

Participation in conferences

As a corollary of this, the PLTC's national and international profile would be raised, particularly by the participation of staff in conferences. One reason why the profile of the course may have dropped somewhat is that people have not been out much at conferences or visiting other institutions, and so it has been a case of "out of sight, out of mind."

The professional staff of the PLTC should be renown not only for their teaching but also for their contribution to thought and ideas about skills teaching and practical training, by presenting at conferences.

A consequence of this proposal is that the PLTC's budget would need to include a figure, in its Professional Development line (or whatever it is called), to cover these activities. Obviously, there is a limit to how much could be available but this would probably mean some increase in that item of expenditure.

A session away from teaching

Another proposal is that all instructors might have one session away from teaching (apart from the revision term) every two or three years. In this period the instructors would usually be engaged by CLES to work on designing, revising and teaching the programs for The Professional Triennium. But, they could also, if possible and if they wished, work in a legal practice and thus refresh their practice skills and knowledge.

Appropriate financial arrangements would need to be made. Probably the instructor would stay on the PLTC staff and the CLES or law firm or whatever would contract with PLTC to provide that person's services.

I am not proposing a sabbatical leave scheme. This is not leave; rather the instructor would be outside the PLTC developing special skills for the purposes of the course.

An additional instructor would need to be engaged to replace the instructor on professional development placement. There is a budgetary implication but the fee earned for providing the instructor's services should equal, and perhaps exceed, the cost of engaging an additional instructor.

The Director

The possibility of the Director teaching for a module should be looked into, as a form of professional development so that he was able to refresh teaching skills and closer contact with students and the day-to-day implementation of the course.

It is very important the course remains close to the profession. The Director's role should include frequent contacts with the profession by speaking to groups, preparing articles for newsletters, talking to law firms etc.

16.2 Specialization

The issue of whether instructors should specialize has been raised with me. I think there would be value in each instructor specializing in one, or perhaps two, skills. As the skills teaching is at the core of the course, there could be value in instructors become specialists in each of the skills. As part of this, they would work to professionally develop themselves in that area, by reading, study and conference attendance.

In terms of instruction, this could either mean that that instructor/s taught in just that skill area, or all instructors taught but the "management" of the skill in the course was the responsibility of that one, or perhaps two, instructor/s. I think the latter is the better solution; otherwise there could be quite serious logistical difficulties.

To some extent this happens already. It would be a matter of formalizing existing arrangements. It might be best to have each instructor allocated to one skill (in which could be included the skill of law practice management) with one other instructor as a deputy. Thus each instructor would have responsibility for two skills – one as the primary person responsible and one as the deputy.

With modularization there is the possibility of specialization based on the two modules. This could be explored, but I suspect that the best option for the course's ongoing development is to focus on building up experts in the various skills.

16.3 Staffing structure

It was suggested to me that, at the top of the course, there might be a Director, to oversee the program and account to the Law Society, and a course coordinator, who would schedule courses, assist instructors with design and teaching techniques, etc. I am not convinced that a course of this size needs both these positions. The description of the course coordinator position seems to me to be the duties one would normally associate with a director in a course of this size.

16.4 Allocation of instructor to one group of students for the whole course

At present, a student has the same instructor throughout the whole course. I have considered whether there would be value in either moving instructors to another group, say halfway through the course, or even reassembling groups halfway through the course. In this latter case, each student would be in a different group for the second half of the course. There might be value in learning from a second instructor and with other students. On the other hand, it was pointed out to me that the instructor becomes a sort of substitute principal and plays an important mentoring role beyond the mere instruction and assessment, including that of a role model.

Based on my consultations, and on reflection, I think it best not to do either of these things. There does not appear to be any dissatisfaction amongst students that they stay together in the one group and with the one instructor throughout the whole ten weeks of the course. Although there could be value in a

change, as there is no pressure for it, and as my experience is that it causes disruption for those students who resent the change, I do not recommend that the present system be changed.

17 Ongoing evaluation and renewal

I recommend that the course should have in place a system to enable ongoing evaluation and renewal, and that this process should begin immediately.

I suggest the following process as a first immediate step in the process of renewal. If the concept of modules based on solicitors' and barristers' work is adopted, then a small working group be appointed for each module. This group could include the Director, selected instructors, practitioners with expertise in the area and, if possible, an expert in skills design and teaching. The structure and content of both of the modules would be totally reviewed, and the way in which the skills, including legal practice skills, would be integrated with the transactions would be decided.

At the same time, the materials needed to support the teaching of each module would be identified. These are likely to comprise CLES practice manuals, the revised *Practice Material* and perhaps other resources, such as statutory material (if it is not in the practice manuals). The syllabus, design of the module, teaching methods (based on the module chose) and the assessments would all be reviewed. In other words, it would be a complete review. This is not to say that much of the existing structure, approach, materials, exercises and assessment would be discarded and the course would, in effect, have to start again. On the contrary, the exercise could well confirm that much of the existing course remains as relevant, and that the materials, exercises and assessments are well designed.

But there needs to be a built-in ability to continue to review and readapt the course. It needs to be so structured that it can be responsive to change, where it is appropriate, and be in a state of continuous improvement – which is more than just continuous refinement. In the next chapter I will propose that there be ongoing strategy plans for the PLTC, and these could form the structure for ensuring continuous improvement.

A further element would, therefore, be a more structured system of ongoing evaluation and renewal of the course. For example, students complete an evaluation questionnaire. The results, and an analysis of the results, would be provided to the Board (as to which, see below) at the end of each session, and significant parts of the results would be included in the annual report.

The Director receives the evaluation of each instructor at the end of each course. Whilst it would not be appropriate to provide these to the Board, the Director could, as part of his regular reporting role, advise the Board of students' perceptions of instructors.

There could also be some research on the career destinations of former students – the sorts of practices they entered, where (geographically) and perhaps the sort of work undertaken by them in the early years of practice. Most importantly, this research could be used to check on a regular basis whether the skills taught in the course, in the realtive weight given to them, reflects the needs of junior lawyers. A survey of employers might also be done from time to time. Much, or all of this, is either being done by the Law Society or is available from the Law Society. In that case, it would be a case of liaison and cooperation.

The profession should be involved in this process of ongoing review and renewal. The actual people should not always the same small group of supporters, but a renewing group of lawyers.

18 Administration and governance

18.1 Governance of the PLTC

The PLTC sits, in some ways, in an unclear position between the Law Society and the CLES. This can result in it either answering to two masters, or having none. Neither is desirable.

The course is administered by the CLES. I understand that the relationship between the CLES and the Law Society is set out in a document entitled *Relationship between the Law Society and the Continuing Legal Education Society*, which was approved by the Benchers in 1988. I have not seen that document.

There was, until 1994, a subcommittee of the Credentials Committee called the PLTC Subcommittee which dealt with all aspects of PLTC. That subcommittee was abolished and the Credentials Committee itself is effectively the course's governing body. However, it appears that effectively it only deals with student appeals, not with strategic planning, governance or evaluation.

The Law Society Rules give the Credentials Committee supervisory power over the PLTC. Rules 2-26 and 2-44 deal with this in a somewhat roundabout way. The relevant parts are:

2-26 The Credentials Committee may

a. designate dates as enrolment start dates,

….

a. implement, administer and evaluate a training course and examinations, assignments and assessments for all articled students,

b. establish standards for passing the training course and examinations, assignments and assessment,

c. establish procedures to be applied by the Course Director and faculty of the training course for

d. the deferral, review or appeal of failed examinations, assignments and assessments, and

e. remedial work in the training course or examinations, assignments and assessments, and

f. review, investigate and report to the Benchers on all aspects of legal education leading to call and admission.

…..

2-44

1. The Executive Director may set the dates on which sessions of the training course will begin.

2. The Credentials Committee may direct that an articled student be given priority in selection of the training course session that the student wishes to attend if the student is or will be

a. articling outside the Lower Mainland

b. articling as the only student in a firm, or

c. employed as a law clerk.

…….

The Credentials Committee does deal with PLTC policy matters to some extent, but it has focussed largely on hearing appeals from students: perhaps a natural thing for lawyers to do, rather than to set policy and oversee its implementation.

It seems to me that the governance of the PLTC needs to be reviewed. The current situation is not conducive to the good governance of the course, and of the implementing of the proposals in this report. The PLTC would benefit from a governance structure which:

- clearly delineates responsibilities and accountabilities
- sets, and evaluates, policy and general direction
- encourages innovation and continuous quality improvement
- enables the PLTC to take advantage of new educational technologies.

For example, it would be advantageous if the PLTC were to develop a strategy plan, for a period of say two or three years. This would be an ongoing process, *ie* the course would always be operating under a strategy plan. That plan would be largely focussed, in its early stages, on the implementation of the recommendations in this report, together with the evaluation of that implementation.

The course would benefit from a governance structure which enabled the setting of policy and general directions, the provision of input and advice to the Director and others, and which ensured that the management of the PLTC was accountable and transparent.

If the decision were to establish a board, it should be a board of people who are chosen essentially for what they can contribute to the course's work and deliberations, rather than solely on an *ex officio* basis.

I recommend that the Law Society and the CLES put in place a process to develop a new PLTC governance structure which achieves these objectives, and no doubt more.

18.2 A strategy plan

I suggest that the PLTC should develop a strategy plan, for a period of say two or three years. This would be an ongoing process, *ie* the course would always be operating under a strategy plan. That plan would be largely structured to enable the implementation of the recommendations in this report, together with the evaluation of that implementation. The plan could take, for example, a classic strategic planning format – what does the PLTC want to be, where does it want to go, how will it get there, and what will it need to get there?

As an example of what might be included, the staff professional development proposal, outlined above, would be incorporated into this plan.

The Director would regularly report to the Board on the implementation of the plan. This would make the course more accountable, and would create a structure to ensure that happened.

18.3 Annual report

Part of that process would be an annual report. Annual reports have been provided by the Director of the PLTC to the Law Society periodically.

There should desirably be a pro forma Annual Report specifying what was to be reported on, thus ensuring that information such as student numbers, numbers completing, where students came from, where they went, failure rates, and so on, was widely disseminated. There is already available a statistical analysis of incoming students in regard to gender, graduating law school, age etc. At present this analysis is provided to each instructor. It should appropriately also be reported in a public Annual Report. The Annual Report should be based on objectives agreed upon by the Law Society and the PLTC.

Appendix A: Meetings held as part of the review

Consultations

Thursday, October 29, 1998

8:30 a.m. – 9:00 a.m. – Diane Stuart
9:00 a.m. – 1:30 p.m. – Law Society of B.C. staff
2:00 p.m. – 4:00 p.m. – Dean Joost Blom, UBC Faculty of Law

Friday, October 30, 1998

9.00 – 10.00 am – Morag McLean
12:00 – 2:30 p.m. – Ron Friesen
3.00 – 3.45 pm – Bill Duncan

Monday, November 2, 1998

10:00 a.m. – 12:00 – Lenore Rowntree
12:00 – 2:00 p.m. – Maureen Fitzgerald
2:30 p.m. – 4:00 p.m. – Nadia Myerthall & Sandie Dielissen

Tuesday, November 3, 1998

9.00 – 10.00 am – Nicole Rhodes, Bull Housser & Tupper
10.30 – 11.30 am – Don Thompson
12.00 noon – talk to staff
2.00 – 3.00 pm Jonathan Meadows, Harper Grey

Wednesday, November 4, 1998

8.45 – 9.45 am Patsy Sheer
11:30 a.m. – 2:00 p.m. – Dean David Cohen, University of Victoria Faculty of Law
3:00 p.m. – 4:00 p.m. – John Waddell, Q.C., Stewart Waddell Raponi & McLean
4:00 p.m. – 5:00 p.m. – Margaret Sasges, Berge, Sasges & Company (young lawyers, CLES Executive)

Thursday, November 5, 1998

10.00 – 10.30 am – telephone link to Robyn Sully – CBA
12.00 – 1.30 pm – Bill Duncan
1.30 pm – Don Thompson
3:15 p.m. – 4:15 p.m. – Pete Warner, Q.C. (former bencher – smaller firms)
4.30 pm – Credentials Committee
6.00 pm – CLES Board meeting

Friday, November 6, 1998

8.15 Racquel Gonsalves
9.00 am – Benchers meeting
10.30 pm – Maureen Fitzgerald
1.30 pm – Drew Jackson – CLE, online
4.00 pm – Trudi Brown – Treasurer

Tuesday, November 10, 1998

9.00 am – Linda Rainaldi
10.00 am – Brad Daisley
2.30 – 4.00 pm – workshop with PLTC instructors

Thursday, November 12, 1998

9.30 am – Felicia Folk, Law Society
10.00 am – Jim Matkin, Law Society
10.45 am – Kuan Foo, Law Society
2.00 – 4.00 pm – workshop with Jack Huberman, Bill Duncan, Ron Friesen, Don Thompson, Maureen Fitzgerald and Linda Rainaldi

Appendix B:

THE CONTENT OF PROFESSIONAL LEGAL TRAINING

adopted by the Credentials Committee
November 5, 1998

Executive Summary

This document is the foundation document describing the content of professional legal training (PLT). It will be reviewed over the next few years to ensure it meets the changing needs of applicants, the Law Society, the legal profession and the resources dedicated to PLT.

How did we arrive here?

In 1996 the Benchers adopted a *Statement of Precall Requirements* that describes the knowledge, skills and qualities necessary for newly called lawyers. This paper describes *which* of these requirements should be learned during professional legal training (PLT). A draft of this paper was circulated to Canadian law societies, law schools, professional legal trainers and other interested parties for comment.

The following are the general conclusions reached in this document.

I. Lawyers' functions. During PLT applicants to the bar should learn about the functions of lawyers and specifically about problem solving and helping clients plan and avoid disputes.

II. General knowledge and basic skills. Applicants should learn most general knowledge and basic skills well before attending PLT. This includes such things as reading and writing. Applicants lacking in these skills should seek outside remedial help before PLT.

III. Legal knowledge. Applicants should come to PLT with an understanding of legal systems, legal theory, framework substantive knowledge and framework procedural knowledge. If the Law Society expects applicants to know more substantive and procedural law than is actually learned during law school, the Law Society will attempt to identify and inform students about what they need to know. This knowledge will not be included directly in PLT but will be learned outside classroom time and examined separately. Some of this knowledge will be used to teach skills and transactions in context.

PLT will include transaction-based knowledge which is selected on the basis of defined criteria. This knowledge will enable applicants to complete real transactions in the context of legal practice.

IV. Lawyering skills. Applicants should learn necessary lawyering skills during PLT and be able to demonstrate ability in necessary skills before being called to the bar. Because it is difficult to learn all of the necessary skills during PLT, criteria will be used to select skills and decide at which level skills will be taught. Some thought will also be given to providing applicants with written materials to enable them to self-learn some of the basics of skills. Ideally, classroom time should be devoted to demonstrating skills, practising skills and receiving feedback.

It is recognized that many applicants enter PLT with some training in skills. Therefore, as more is learned about the skills that applicants possess, consideration will be given to developing pre-assessments, which will allow applicants with an appropriate level of skill to skip certain aspects of PLT.

V. Law Practice Skills. Applicants should learn necessary law practice skills in PLT. This includes an understanding of the business of law practice and extends to the practical realities of day-to-

day practice and specifically law office systems. Because it is not possible to learn all law practice skills during PLT, criteria will be used to select the specific skills and the level at which they will be taught.

VI. Professional Attitude. Although applicants possess certain professional attitudes before they begin PLT, because of the importance of attitudes to the practice of law, applicants should continue to learn about this during PLT. Ethical training should be in the context of transactions and include identifying and solving different types of ethical dilemmas.

VII. Personal Characteristics. Applicants should possess personal characteristics that are important to the practice of law (e.g. empathy and honesty). Although there is some question about where and how these characteristics can be learned, students should continue to learn about their importance and application to practice during PLT.

A summary of what is to be included in PLT and some content selection criteria is attached to this paper.

A. Introduction

In 1996 the Benchers adopted a *Statement of Precall Requirements* that describes the knowledge, skills and qualities necessary for newly called lawyers.[24] This paper describes which of these requirements should be learned during professional legal training (PLT). Discussions about what should be learned in law school and articling will take place later.

In order to determine what should be learned during PLT, Law Society staff consulted with other professional legal trainers and educators and reviewed literature and the experiences of other jurisdictions. A draft of this paper was circulated to Canadian law societies, professional legal trainers and other interested parties for comment. The conclusions are contained here.

Because it is not possible to teach everything during PLT it is important to be clear about not only what is needed but also about what is possible. It has always been recognized that it is not possible for lawyers to know all the law. However, it is believed that lawyers must possess a certain amount and type of knowledge to be able to practise law at any level.

During consultation a few things became readily apparent. The most obvious is that the curriculum of PLT currently fills all of the time available. If any content is added, something must be revised or removed. Another related fact is that the content of PLT is limited by time and resources and is mandated by the Law Society, which sets the entrance requirements. In 1991 the Law Society of British Columbia Post-Call Curriculum Planning Committee described these curriculum issues in the following way:

> *PLTC is the only educational forum in which the profession controls the subject matter of education. We have designed and evolved a curriculum that highlights certain areas, and of necessity downplays or, because of lack of time or priority, ignores others. In our view, the first issue for examination is a discussion of the appropriate factors that should influence the curriculum content in the PLTC. Having looked at that, we need to examine whether every student should take the same program, or whether it is desirable and practical to have a curriculum that, at least to some extent, adapts to the needs of particular students or groups of students.*[25]

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[24] The process and development of these requirements is explained in more detail in the *Requirements for Newly Called Lawyers - A Consultation Document* (January 30, 1996).

[25] *Post Call Curriculum Planning Committee Report*, 1991 (Law Society of British Columbia) at 31.

B. The Content of PLT

This paper describes what should be included in PLT and some criteria for determining the content of PLT. Each pre-call requirement (as described in the *Statement of Pre-call Requirements*) is discussed here with a description about which aspects should be learned in PLT as follows:

I. Lawyers' functions
II. General knowledge and basic skills
III. Legal knowledge
    A. Knowledge of legal systems
    B. Knowledge of legal theory
    C. Framework substantive knowledge
    D. Framework procedural knowledge
    E. Transaction-based knowledge
IV. Lawyering skills
    A. Intellectual skills
    B. Communication skills
    C. Case management skills
V. Law practice skills
    A. Manage clients
    B. Manage self
    C. Manage a law practice
    D. Manage law firm finances
VI. Professional attitude
VII. Personal characteristics

It should be emphasized that PLT is part of a continuum of legal education that begins with law school and continues for the life of each lawyer. The learning during PLT must therefore build upon that learned in law school, be integrated with learning during articles and provide a foundation for life-long learning.

A summary of the content of PLT is attached to this paper.

I. Lawyers' Functions

Applicants to the bar must understand what lawyers do. The following is a recent, clear description of these functions, articulated in 1994 by two American scholars:

> *Lawyers are called upon to counsel clients about strategic decisions, to help them define and at times choose among competing values and goals, to design processes and institutions, to negotiate and draft agreements, and to persuade administrative, legislative, and judicial decision makers to take particular actions.. . . At their best, lawyers serve as society's general problem solvers, skilled in avoiding as well as resolving disputes and in facilitating public and private ordering. They help their clients approach and solve problems flexibly and*

> *economically, not restricting themselves to the cramped decision frames that "legal thinking" tends to impose on a client's predicament. The good lawyer brings more to bear on a problem than legal knowledge and lawyering skills. She brings creativity, common sense, practical wisdom, and that most precious of all commodities, good judgment.*[26]

During PLT applicants should learn about how lawyers practice law including the following fundamental legal functions:

- gathering and analyzing facts;
- identifying problems or legal issues;
- researching and analyzing the law;
- applying the law to problems;
- considering different solutions;
- developing and implementing plans; and
- presenting results.

These functions are often described in combination as problem solving but also include planning and dispute avoidance. These functions provide a description of what lawyers do and a process to deal with most legal issues. These functions and related skills overarch each of the other skills, knowledge and qualities described below.

Conclusion: During PLT applicants to the bar should learn about the functions of lawyers and specifically about problem solving and helping clients plan and avoid disputes.

II. General Knowledge and Basic Skills

General knowledge is that knowledge which applicants usually acquire prior to attending law school. It includes knowledge about the world beyond law. Such knowledge includes the English language, basic mathematics, and knowledge such as that which might be acquired through the study of sociology, political science, psychology, economics and business.

Intertwined with this general knowledge are basic skills. These skills include speaking, reading, writing, arithmetic, problem-solving, conceptualization, listening, questioning, planning and interpersonal skills.

Conclusion: Applicants should learn most general knowledge and basic skills well before attending PLT. This includes such things as reading and writing. Applicants lacking in these skills should seek outside remedial help before PLT.

[26] P. Best and L. Krieger, *On Teaching Professional Judgment* 3 (1994) *Washington Law Review* 527 at 529.

III. Legal Knowledge

Legal knowledge is an understanding of the law necessary to practice law. It includes knowing about certain laws and being able to comprehend them. Typically, this knowledge is divided into substantive law and procedural law. The intellectual skills used to apply this knowledge, such as legal reasoning are discussed later under Lawyering Skills.

It has always been recognized that it is not possible for lawyers to know *all* the law. However, it is believed that lawyers must possess a certain amount and type of knowledge to be able to practise law at any level. At present, the Law Society qualification examinations test knowledge of nine specific areas of law. The exam questions tend to focus on substantive and procedural law within specific areas of practice. However, this level of detailed knowledge over such a broad range of practice areas does not appear to be necessary for all newly called lawyers.

Applicants do not need the knowledge necessary to carry out *every* possible transaction, but rather should possess a broad range of knowledge. The following statement describes this knowledge:

> *... notwithstanding the increasing demand for specialized knowledge and skills, competent representation of a client still requires a well-trained generalist — one who has a broad range of knowledge of legal institutions and who is proficient at a number of diverse tasks. This is so because any problem presented by a client (or other entity employing a lawyer's services) may be amenable to a variety of types of solutions of differing degrees of efficacy; a lawyer cannot competently represent or advise the client or other entity unless he or she has the breadth of knowledge and skills necessary to perceive, evaluate, and begin to pursue each of the options. Indeed, the lawyer is not even in a position to diagnose the client's problem adequately unless the lawyer has the range of knowledge and skill necessary to look beyond the client's definition of the problem and identify aspects of the problem and related problems which the client has not perceived.*[27]

There is some fundamental knowledge that *all* lawyers should possess. This includes knowledge of legal systems, legal theory, framework substantive knowledge, framework procedural knowledge and transaction-based knowledge. Some of this knowledge is learned at law school, some during PLT and some during articles. Each type of knowledge is described here.

A. Knowledge of legal systems

Applicants need to have a basic understanding of legal systems. This includes an understanding of legal processes and the role of courts, administrative tribunals, judges, lawyers and law enforcers in these systems. Specifically, it includes an understanding of the structure of federal, provincial and other court systems, distinctions in jurisdiction and conflicts of law. Ideally, it should include an understanding of legal processes in other jurisdictions and the basics of international legal processes. *This type of knowledge is learned during law school.*

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[27] American Bar Association, *Legal Education and Professional Development - An Educational Continuum; Report of the Task Force on Law Schools and the Profession: Narrowing the Gap* (Chair: MacCrate) (Chicago: American Bar Association, 1992) at 24.

B. Knowledge of legal theory

Applicants should have an understanding of why law exists and how laws and legal systems work together in society. Legal theory also includes knowledge of jurisprudence and how the law is formed. Included in this knowledge is an understanding of the difference between civil, common and aboriginal law and the interplay of statute and case law. *This type of knowledge is learned during law school.*

C. Framework substantive knowledge

It is not possible for applicants to know *all* substantive law. Therefore, it is preferable that they know some basic "frameworks" of substantive law. Some refer to this knowledge as "generic" or "fundamental" to all lawyers. For example, lawyers should understand basic conceptual underpinnings of private and public obligations.

Less emphasis should be placed on that knowledge that has a limited shelf-life and more emphasis should be placed on fundamental underpinnings of law. At the broadest level applicants should have sufficient understanding of concepts of law to:

- recognize circumstances that give rise to legal relationships creating legal rights and obligations;
- characterize legal matters into appropriate categories of law;
- understand the legal principles that govern legal relationships and how these principles create, regulate, correct or terminate the relationships between the parties;
- understand social, political or other policy that underlies statutes, regulations and caselaw; and
- understand the basic premises or fundamental rules underlying various areas of law.

Although we have a fairly good understanding of the larger categorizations of law (e.g., torts and contract) some time will be spent on determining exactly what knowledge is needed by *all lawyers* to enable them to correctly identify legal issues and manage and solve legal problems. For example, a real estate lawyer needs to know some family law in order to deal with the transfer of property owned by spouses.

Because details of substantive law are constantly changing, it is also necessary that applicants possess good research skills to locate these laws. This focus is particularly important in this information age. Legal research is discussed below under Lawyering Skills.

Most of this framework substantive knowledge is learned by applicants during law school. Indeed students learn much more than just the frameworks during their three years at law school. Students also learn the skill of legal reasoning or legal analysis (or the process of *applying* legal knowledge) which is discussed below under Lawyering Skills.

Framework substantive law will be included in PLT only as necessary for applicants to learn skills or transactions.

D. Framework procedural knowledge

It is not possible for applicants to know *all* procedural law. Instead, applicants should possess a basic understanding of the basic remedies available and the frameworks of procedural law. This includes:

- understanding and recognizing the regulatory structure that governs legal proceedings and legal transactions;
- understanding basic legal remedies available;
- understanding the framework of rules governing procedures of the courts, administrative boards and tribunals and regulatory bodies (including registration and filing requirements for transactions regulated by statute);
- understanding the rules of due process;
- recognizing limitation periods in legal transactions or proceedings; and
- understanding the rules and procedures that govern the introduction of evidence in legal proceedings.

More and more, students are learning about procedural law in law school. Some law school courses include components of process and the co-op programs and clinics immerse students in procedural law.

Most procedural knowledge should be learned by applicants during law school or on their own time. Framework procedural knowledge will be included in PLT only as necessary for applicants to learn skills or transactions.

E. Transaction-based knowledge

Applicants should not only possess framework knowledge of substantive and procedural law, but also some specific transaction-based knowledge. This transaction-based knowledge is essentially more specific procedural law combined with practical practice advice. It often takes the form of detailed checklists similar to those found in lawyer's practice guides or the *Law Society Practice Checklist Manual*.

It is not possible or desirable for each applicant to learn the detailed processes of each transaction. However, applicants must have an understanding of at least a few transactions and the opportunity to practice a few transactions to develop the ability to manage a file. It is not good enough that applicants know about the law. They must also be able to demonstrate through a few transactions that they have necessary *skills* to be able to apply the law and to see a file through from beginning to end.

Specifically, applicants should:

- understand the different approaches that could be taken to deal with legal issues and evaluate which is most appropriate;
- understand the broad steps necessary to initiate, conduct and conclude certain legal proceedings (such as commencing an action) and transactions (such as incorporating a company or probating a will); and

- understand business or legal practice customs that are applicable to particular legal proceedings and transactions (such as profit motive).

Applicants do not need to know how to complete *every* possible legal transaction. The following factors should be used to decide which transactions to include in PLT:

- transactions that are likely to be encountered by most lawyers after call;
- transactions that make use of a range of lawyering skills; and
- transactions that cover a wide range of knowledge and ethical concerns.

Conclusion: Applicants should come to PLT with an understanding of legal systems, legal theory, framework substantive knowledge and framework procedural knowledge. If the Law Society expects applicants to know more substantive and procedural law than is actually learned during law school, the Law Society will attempt to identify and inform students about what they need to know. This knowledge will not be included directly in PLT but will be learned outside classroom time and examined separately. Some of this knowledge will be used to teach skills and transactions in context.

PLT will include transaction-based knowledge which is selected on the basis of defined criteria. This knowledge will enable applicants to complete real transactions in the context of legal practice.

IV. Lawyering Skills

Applicants should possess most lawyering skills. Similar lists of skills show up in the majority of descriptions of legal competence from around the world and form the basis of several professional legal training courses. For simplicity lawyering skills have been divided into intellectual, communication and case management skills as follows:

A. Intellectual skills

1. Fact investigation
2. Factual analysis
3. Issue determination
4. Legal research
5. Legal analysis or reasoning
6. Problem-solving
7. Judgment
8. Learning

B. Communication skills

1. Legal reading
2. Oral skills including:
   - (i) litigating or advocating
   - (ii) advising and counselling
   - (iii) listening and questioning
   - (iv) negotiating
   - (v) mediating
   - (vi) arbitrating or judging
3. Legal writing including:
   - (i) writing to inform, advise or persuade
   - (ii) enforceable document drafting

C. Case management skills

18. Managing files and documents
19. Managing legal and business processes
20. Managing self and others
21. Managing time

Since it is not possible to teach every single skill in PLT, the following criteria will be used to select lawyering skills:

- skills that are likely to be encountered by most lawyers after call;
- skills that are not already covered in law school or learned in practice;
- skills that can be objectively assessed; and
- skills that can appropriately be developed in the context of transactions.

A determination will also be made about the depth of learning of each skill considering resource implications.

Conclusion: Applicants should learn necessary lawyering skills during PLT and be able to demonstrate ability in necessary skills before being called to the bar. Because it is difficult to learn all of the necessary skills during PLT, criteria will be used to select skills and decide at which level skills will be taught. Some thought will also be given to providing applicants with written materials to enable them to self-learn some of the basics of skills. Ideally, classroom time should be devoted to demonstrating skills, practising skills and receiving feedback.

It is recognized that many applicants enter PLT with some training in skills. Therefore, as more is learned about the skills that applicants possess, consideration will be given to developing pre-assessments, which will allow applicants with an appropriate level of skill to skip certain aspects of PLT.

V. Law Practice Skills

Applicants should understand certain law practice skills. These are skills necessary to practice law effectively and efficiently. During PLT students should learn how to:

A. Manage clients

- properly identify and avoid conflicts of interest; and
- be accessible to clients and obtain clients' approval before providing services;
- keep clients reasonably informed (e.g., by responding to correspondence and telephone calls); and
- maintain and develop business.

B. Manage Self

- identify continuing learning needs and how to address them;
- organize work by allocating time, effort and other resources effectively to ensure work is carried out in a timely and effective manner;
- be flexible and able to manage or adjust to change; and
- manage personal finances.

C. Manage a law practice [28]

- organize a law practice in a way that ensures the effective and efficient delivery of legal services;
- plan and ensure the goals of the law practice are being met;
- maintain adequate facilities, equipment and resources to deliver legal services competently;
- employ adequate staff, including lawyers and support staff, to deliver legal services competently; and
- ensure that information, such as records, documents and case files, are securely stored, organized and filed in a way that information can be easily accessed.

D. Manage law firm finances

- have sufficient knowledge of firm finances to make appropriate management decisions;

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[28] This description, taken from the *Statement of Pre-call Requirements*, originated from the work of the Law Society Competency Committee. These standards are applied by competency staff in their review of lawyers' practices and are still being revised by the Committee and staff as part of its mandate to communicate to the profession about Law Society standards.

- operate client trust accounts in accordance with the Law Society Rules and can readily account for client funds and valuables; and
- record time, bill regularly for services, ensure that clients promptly pay fees and ensure that practice debts are paid.

Because it is not possible for applicants to learn *all* law practice skills during PLT, the following criteria will be used to select law practice skills:

- practice skills that are critical to the operation of any law practice;
- practice skills that are likely to be encountered by most lawyers after call;
- practice skills that span a wide range of practice areas as opposed to a single area of law;
- practice skills used in exemplary law practices; and
- practice skills that are not better learned after call.

Conclusion: Applicants should learn necessary law practice skills in PLT. This includes understanding the business of law practice and extends to the practical realities of day-to-day practice and specifically law office systems. Because it is not possible to learn all law practice skills during PLT, criteria will be used to select the specific skills and the level at which they will be taught.

VI. Professional Attitude

Applicants should possess a professional attitude and know how to act professionally and ethically. A professional attitude includes:

- understanding and following rules of professional conduct;
- recognizing circumstances (professional and personal) that give rise to ethical problems or conflicts;
- identifying ethical principles and professional rules of conduct that govern an ethical problem or conflict;
- applying appropriate ethical principles or rules of conduct to resolve ethical problems or conflict (in keeping with lawyers professional duties);
- knowing, understanding and following principles of fair play, honesty, and truthfulness associated with personal integrity; and
- recognizing one's own moral weaknesses, and guarding against them.

Professional responsibility and ethical requirements are described in more detail in the Law Society *Professional Conduct Handbook* and the CBA *Code of Professional Conduct*.

Conclusion: Although applicants possess certain professional attitudes before they begin PLT, because of the importance of attitudes to the practice of law, applicants should continue to learn

about this during PLT. Ethical training should be in the context of transactions and include identifying and solving different types of ethical dilemmas.

VII. Personal Characteristics

Personal characteristics are those basic characteristics necessary to provide legal services, including intelligence, physical ability and emotional ability. An American scholar described the "softer" aspects of lawyer competence in her critique of the *MacCrate Report* on legal education:

> *What is most missing for me in the MacCrate Report and in legal education is any systematic teaching and learning about what has been called "the human arts of lawyering." To the extent that most lawyers spend most of their time with people there is insufficient attention given to the arts (and science) of interacting with others. Kronman points out that the ability to be "sympathetic" to the client is an essential part of lawyering. Unlike others who write about lawyering and the legal profession, he believes it can be, unlike intuition, "discursively explicated." He suggests that the good lawyer must develop an "imagination" for considering the world view and values and choices of the person whom one is trying to help (the client). Thus, lawyers must learn how to "feel with" others. This process, which I call "empathy training," is an essential part of the client-lawyer relationship and ... I believe it can be taught and learned.* [29]

It has been suggested that these "soft" attributes are often ignored in assessment of competence in favour of the more objective tests of knowledge or readily identifiable skills. Research will be necessary to define more clearly the personal characteristics needed to practise law. Currently, the Law Society requires that applicants demonstrate good character, repute and fitness to become a lawyer.

Some of the personal characteristics that lawyers should possess overlap with those described under professional attitude. Applicants should be:

- honest
- courteous
- cooperative
- confidential
- candid
- considerate
- reliable
- objective
- financially responsible
- confident
- emotionally stable
- culturally sensitive
- non-discriminatory
- empathetic
- gender sensitive
- patient
- respectful

Conclusion: Applicants should possess personal characteristics that are important to the practice of law (e.g., empathy and honesty). Although there is some question about where and how these characteristics can be learned, students should continue to learn about their importance and application to practice during PLT.

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[29] Carrie Menkel-Meadows, *Narrowing the Gap by Narrowing the Field: What's Missing from the MacCrate Report — of Skills, Legal Science and Being a Human* 3 (1994) *Washington Law Review* 593 at 619–620.

C. Conclusion

This paper describes the specific requirements that should be learned by applicants during PLT.

This will form the foundation document describing the content of PLT. It will be reviewed periodically to ensure it meets the changing needs of applicants, the Law Society, the legal profession and resources dedicated to PLT.

A summary of

THE CONTENT OF PROFESSIONAL LEGAL TRAINING

by the Law Society of British Columbia, November 1998

The following describes the skills, knowledge and qualities that should be learned by applicants during PLT. This description will form the foundation of PLT and will be reviewed periodically to ensure it meets the changing needs of applicants, the Law Society, the legal profession and the resources dedicated to PLT.

I. Lawyers' functions

Applicants will learn about the functions of lawyers and specifically about problem solving and helping clients plan and avoid disputes.

II. Legal knowledge

A. Framework substantive and procedural knowledge. Applicants should come to PLT with an understanding of framework substantive and framework procedural law. It will be included in PLT only to the extent necessary to enable applicant to learn skills and transactions.

B. Transaction-based knowledge. Applicants do not need to know how to complete *every* possible legal transaction. However, they should know the basic components of a transaction, how to complete a few basic transactions and know enough to develop skills necessary to mange most transactions.

Specifically, applicants should:

- understand the different approaches that could be taken to deal with legal issues and evaluate which is most appropriate;
- understand the steps necessary to initiate, conduct and conclude certain legal proceedings (such as commencing an action) and transactions (such as incorporating a company or probating a will); and
- understand business or legal practice customs that are applicable to particular legal proceedings and transactions (such as profit motive).

The following factors will be used to decide which transactions to include in PLT:

- transactions that are likely to be encountered by most lawyers after call;
- transactions that make use of a range of lawyering skills; and
- transactions that cover a wide range of knowledge and ethical concerns.

III. Lawyering skills

Applicants will learn most of the following lawyering skills during PLT and be able to demonstrate ability in each skill before being called to the bar.

A. Intellectual skills

1. Fact investigation
2. Factual analysis
3. Issue determination
4. Legal research
5. Legal analysis or reasoning
6. Problem-solving
7. Judgment
8. Learning

B. Communication skills

1. Legal reading

2. Oral skills including:
   - (i) litigating or advocating
   - (ii) advising and counselling
   - (iii) listening and questioning
   - (iv) negotiating
   - (v) mediating
   - (vi) arbitrating or judging

3. Legal writing including:
   - (i) writing to inform, advise or persuade
   - (ii) enforceable document drafting

C. Case management skills

22. Managing files and documents

23. Managing legal and business processes

24. Managing self and others

25. Managing time

Since it is not possible to teach every single skill in PLT, the following criteria will be used to select lawyering skills:

- skills that are likely to be encountered by most lawyers after call;
- skills that are not already covered in law school or learned in practice;
- skills that can be objectively assessed; and
- skills that can appropriately be developed in the context of transactions.

A determination will also be made about the depth of learning of each skill considering resource implications. Almost all classroom time will be devoted to demonstrating skills, practising skills and receiving feedback.

IV. Law Practice Skills

Applicants will learn many of the following law practice skills in PLT.

A. Manage clients

B. Manage self

C. Manage a law practice

D. Manage law firm finances

Because it is not possible to learn all law practice skills during PLT the following criteria will be used to select the specific skills and the level at which they will be taught:

- practice skills that are critical to the operation of any law practice;
- practice skills that are likely to be encountered by most lawyers after call;
- practice skills that span a wide range of practice areas as opposed to a single area of law;
- practice skills used in exemplary law practices; and
- practice skills that are not better learned after call.

V. Professional Attitude

During PLT applicants will continue to learn about ethics in the context of transactions. This includes identifying and solving different types of ethical dilemmas.

VI. Personal Characteristics

During PLT applicants will continue to learn about the importance of positive personal characteristics and their application to practice.

Appendix C: Matters to be clarified in regard to the proposed Entrance Examination

There is a current proposal that there be an Entrance Examination, and the Credentials Committee has, apparently, agreed in principle to introduce such an examination. To explore this possibility, it is first necessary to be clear as to two interrelated questions: the purpose of this examination, and what it should test. The documentation prepared so far is not, in my opinion, consistent in regard to either of these questions.

The purpose of the Entrance Examination

In regard to its purpose, there appear to be four possibilities:

1 One purpose could be to ensure that applicants have this knowledge *in order to be able to undertake the PLTC*. The course would be predicated on students entering it with that knowledge, and thus there would be a need for it to be before the course, *ie* an entrance examination.

2 Another purpose could be to check that applicants for Call have the breadth and depth of knowledge of the law, which they ought to have received at law school, as a *precondition of their Call*. In this case there is no real reason why the examination has to be before the PLTC; it could equally be after the PLTC.

There are two additional purposes, which are different in nature to these alternative purposes.

3 The third possible purpose would be to have the examination before the PLTC simply in order to relieve the current undesired pressure on the Credentials Committee to deal with students' appeals (as a result of failing the Qualification Examination) at a point where the students have satisfied every other requirement for Call. This is a perfectly valid purpose for moving the examination forward to prior to the PLTC, but it does not suggest what should be tested.

4 The fourth purpose would be simply to untangle the examinations from the PLTC, freeing it up for more skills teaching and removing the influence which the examinations have on the course. Again, this is not a reason, as such, for an entrance examination, as the examination could equally be moved to a time after the PLTC.

In support of the first of these purposes, a memorandum prepared for the Credentials Committee (dated November 5, 1998) states that the primary reason for implementing an entrance examination is "to ensure, earlier in the educational process, that applicants possess the necessary knowledge to *prepare them for PLTC and articling*" [emphasis added], and elsewhere it says "it will test knowledge that *all* lawyers need to enable them to begin PLTC and articling" (p. 3). The memorandum concludes that:

> This would enable the providers of PLTC to spend less time teaching substantive and procedural law and more time teaching skills. It would also enable the Law Society to screen at an earlier stage those applicants that do not have the appropriate breadth or depth of knowledge required to enter into articling or PLTC. (p. 10)

If, then, its sole purpose is to test for this knowledge, it clearly should be before PLTC and the remaining issue to be dealt with, in implementing the proposal, would be to identify that "necessary knowledge."

But there is confusion because elsewhere the memorandum suggests:

> An admission exam should be competence-based. This means it should originate from a description of the competent newly called lawyer and it should test those things that newly called lawyers will need to practise law.

It goes on to refer to the *Statement* document, which it says describes the "skills and knowledge lawyers should possess *at Call*" [emphasis added], and suggests that this document could "be used as a base description of the skills, knowledge and qualities required of newly called lawyers and a description of what needs to be tested." (p. 4)

If this is the purpose then it would appear to suggest that the examination should be after PLTC rather than before it.

There needs to be clarification as to which of these purposes the proposed examination is to serve. Only the first and third purposes point to the need for an entrance examination and no other. The second purpose suggests that an examination towards the end of articles would be more appropriate. The fourth purpose is an argument for an examination at any time but not during the PLTC.

The content of the Entrance Examination

In this area there is also some uncertainty in regard to two matters.

The first is whether the examination is to test knowledge only, or whether it is also to test some intellectual skills. Some parts of the memorandum of November 5, 1998 appear to see it as an examination of knowledge only. However, elsewhere in the memorandum it is implied that it would also test legal reasoning (p. 3), ability to identify legal issues (p. 3), legal problem solving (p. 9) and/or legal analysis (p. 9). The memorandum quotes a statement from Nova Scotia (where an entrance examination has been introduced already, and which is seen as a model for British Columbia):

> *The entrance examination should test the ability of an applicant to identify legal issues in a statement of facts, such as may be encountered in the practice of law, to engage in a reasoned analysis of the issues and to arrive at a logical solution by the application of fundamental legal principles in a manner which demonstrates a thorough understanding of those principles.*

and then goes on to say, "in other words it will test that learned at law school plus procedural law and ethics" (p. 3). This examination, the memorandum says, will test substantive law and legal reasoning but, unlike law school examinations, it will test the applicants' ability to identify legal issues from a problem in which legal areas and issues are integrated (not compartmentalized as in law school examinations).

The *Content* document states that, at law school, students will have learned, in addition to framework knowledge, the skill of legal reasoning or legal analysis which, it says, falls into the sub-category of intellectual skills under the general category of Lawyering Skills (p. 8). But as the *Content* document also states that applicants should learn necessary lawyering skills during PLT, including these intellectual skills, presumably it anticipates their further development during the PLTC. Thus, if there

is to be testing of this intellectual skill in an entrance examination, the level of ability expected would presumably be lower than what could be expected of a person having completed the PLTC.

If the content of the proposed entrance examination is to include the testing of intellectual skills, as well as knowledge, it would need to be clearly established that those skills were indeed developed in law school, and at the level desired.

A second uncertainty is whether what is desired is an examination which, in essence, double checks that students have learned what they should have learned at law school, or whether it is to test that applicants have the knowledge they need in order to practise law. The *Content* document states that it "will test that learned at law school plus procedural law and ethics" and, referring to the Nova Scotia model, it describes how it is based on a description of "the fundamental skills and knowledge required to practise law" (p. 4). The subject areas of the Nova Scotia examination seem to mirror the desired "core" of a law school curriculum, but presumably the test itself tests in these areas at a level appropriate for practise of the law, not exit from law school.

If the content of the proposed entrance examination is to extend beyond what should have been learned at law school, there is a real question of how those being tested could be expected to prepare themselves, without assistance, prior to the PLTC.

Some with whom I met saw the value of an Entrance Examination as being that it would put pressure on the law schools to offer more practical courses, and/or pressure on students to take the more practical courses on offer.

Conclusion in regard to purpose and content

In my view, the purpose and content of the proposed entrance examination, as presently expressed, is confusing. However, it will be absolutely essential that there be no confusion in order to achieve acceptance of the change – within the profession, amongst the law schools and amongst applicants. It will also be essential in order to ensure fairness to those intending to write them.

There needs to be a decision as to which of the four purposes set out above is to be the purpose of the examination of knowledge in The Articling Year, and there needs to be a decision as to what should be tested.

Is there an alternative to an entrance examination?

One of the principal benefits, and thus purposes, of an entrance examination would be to ensure a common base of framework knowledge amongst all those entering the PLTC. This would enable the overall standard of the course to be raised a notch or two. It also would make instructional time more effective as, although substantive and procedural law would be constantly referred to, revised and used in the activities and assessments, it would not be a purpose of the course to actually teach that law.

But if the primary purpose of the examination were not that, but rather to ensure that all those seeking Call had the essential framework substantive and procedural knowledge *in order to be called*, then there is no educational reason why that examination could not be held at any time during The Articling Year.

Indeed one of the people with whom I consulted suggested that it would be better to assume that students have acquired the basics of the law at law school and to treat the examination of necessary legal knowledge conducted during The Articling Year as one that tested applicants in a practically

oriented way. In other words, that person's view was that it is questionable whether there should be further testing of what should have been learned at university and in a form of testing that replicates the law school way of testing. But, his view was, there could be value in testing that students have a practical ability to apply the law to actual situations, including consideration of procedural law.

An entrance examination could not, in all fairness, test that but a qualification examination, after and separate from the PLTC, could. This type of examination would "add value" rather than just re-test what should have been tested at law school.

If this were to occur, the existing Qualification Examinations would be "disentangled" from the PLTC. This would be so that the course would clearly be seen as, not preparing students for those examinations, but rather developing their lawyering abilities (which themselves would be tested at the end of the PLTC). Examinations similar to the Qualification Examinations would be held, but not at the end of the PLTC. Articling students could undertake those examinations at any time during their year of articles except during the PLTC.

There are two possible difficulties with this approach, in addition to the lost opportunity of having a means of ensuring all PLTC students enter with a common body of knowledge:

- there may remain considerable pressure on instructors from students to focus on the framework substantive and procedural law, at the expense of the lawyering skills, because of their preoccupation with the later Qualification Examinations (a preoccupation "inherited" from law school)
- the Credentials Committee would continue to be faced with failed students who, immediately before Call, would be seeking dispensation or special treatment, and placing the Committee in the invidious position of balancing the students' interests against the profession's interest in the maintenance of standards.

Practical matters to consider, should an entrance examination be introduced

The perceived benefits to be argued in support of the introduction of an entrance examination

I can see at least four benefits which could be advanced in favour of the introduction of an entrance examination:

- it would free up time in the PLTC to enable more time to be spent teaching skills, as less time would need be spent teaching substantive and procedural law
- applicants could be screened at an earlier stage, thus not confronting the Credentials Committee with the unenviable and undesirable task of dealing with those who have not been able to display the necessary knowledge well into or late in their articling year
- it would enable the PLTC to be planned and taught on the basis that all students entering it had a common body of knowledge, which we can assume would be more and at a higher level than at present, because some of this knowledge is now taught in the course
- it would assist in reducing the "over-shadowing" of the course by the Qualification Examination, insofar as it were a test of substantive knowledge, and enable the assessment at the end of the course to be focussed on, and more directly test, lawyering ability.

In my view, these are real advantages and could justify the introduction of an entrance examination if it could be done without excessive cost and effort, and certain practical and other difficulties could be overcome – which I will discuss below.

What would the Entrance Examination test?

We can imply from the *Content* document that the "necessary knowledge" could be any of knowledge of legal systems, knowledge of legal theory, framework substantive knowledge or framework procedural knowledge. This is because it is said that these aspects of legal knowledge are not to be taught at PLTC, and will have been learned at law school. In effect, though, it would appear that effectively it would be a test of framework substantive and procedural knowledge, and not directly of knowledge of legal systems or of legal theory.[30]

The *Content* document indicates that this means that, so far as legal knowledge is concerned, the examination would test:

> **Framework substantive knowledge**
>
> A sufficient understanding of concepts of law to:
> - recognize circumstances that give rise to legal relationships creating legal rights and obligations
> - characterize legal matters into appropriate categories of law
> - understand the legal principles that govern legal relationships and how these principles create, regulate, correct or terminate the relationships between the parties
> - understand social, political and other policy that underlies statutes, regulations and case law[31]
> - understand the basic premises or fundamental rules underlying various areas of law.
>
> **Framework procedural knowledge**
>
> A basic understanding of the basic remedies available and the frameworks of procedural law, including:
> - understanding and recognizing the regulatory structure that governs legal proceedings and legal transactions
> - understanding basic legal remedies available
> - understanding the framework of rules governing procedures of the courts, administrative boards and tribunals and regulatory bodies (including registration and filing requirements for transactions regulated by statute)
> - understanding the rules of due process
> - recognizing limitation periods in legal transactions or proceedings
> - understanding the rules and procedures that govern the introduction of evidence in legal proceedings.

Putting aside for the moment the issue of specification of knowledge to be tested, it is not so clear what intellectual skills, if any, the examination would test. In my view, the Nova Scotia requirement is too demanding. It requires identification of legal issues in a statement of facts such as may be encountered in the practice of law, reasoned analysis of the issues, and presentation of a logical solution by the application of fundamental legal principles.[32] It is true that law schools would, generally, claim to teach

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30 The objective of the Qualification Examinations is "to test a student's understanding of substantive law, procedure and practice methodology. The Examinations also test a student's ability to apply legal reasoning to that knowledge. Furthermore, there is an expectation that the student will be able to recognize and respond to all professional responsibility issues …."

31 There is potential confusion between this element and the knowledge of legal theory aspect of legal knowledge.

32 The objectives of the Bar Examination in the Nova Scotia Barristers' Society *Bar Review Materials* are to:
- analyze the facts presented

this string of intellectual skills.[33] The actual specification could be formulated after consultation with the law schools, in order to choose words which the law schools considered adequately described the intellectual skills all law graduates should possess as a result of their schooling.

The difficulty is the requirement that the legal issues arise in "facts such as may be encountered in the practice of law." Should not the bringing-together of various principles drawn from various areas of the law into the complexity of real-life situations be the task of the PLTC? It seems to me that the examination would be testing more than what is learned at law school. In my view, such an examination would mean that the learning of this higher level skill would, in effect, be taught nowhere, and this would be unfair to students.

There are, therefore, two choices – either confine the examination solely to framework knowledge or specify with precision what skills would need to be exercised. Certainly an easy solution would be to restrict the examination solely to framework substantive and procedural knowledge: there would no shortage of things to be tested. Whilst, it would be recognized that law schools would have provided some education in skills of analysis and reasoning, those skills would not be tested.

On the other hand, it may be that what is causing many students to have difficulty with the existing examination is not their capacity to retrieve knowledge but to apply it, using skills such as these.[34] If that were the case, it could suggest that these skills ought to be tested earlier (albeit at a reasonably basic level) in order to deflect students who do not have the necessary intellectual skills to undertake the PLTC.

My recommendation is that any Entrance Examination, should it be introduced, test framework knowledge and certain carefully defined intellectual skills of legal analysis and reasoning, at a level appropriate for law graduates who had not yet undertaken PLTC.

What areas of law or legal practice would be covered in the Entrance Examination?

Applicants would be advised that the Entrance Examination tests framework substantive and procedural law (and perhaps legal analysis and reasoning). They would be provided with the statements, set out above, describing what is meant by framework knowledge. The intellectual skills would also be described in the material provided.

The difficulty would be identifying what areas of the law or legal practice were to be covered. Although it is stated that the entrance examination would test "that learned at law school," in fact a reason for the proposed examinations is that "law school graduates do not have the breadth and depth

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- select the material from the immaterial facts
- articulate and classify the problem presented
- state and apply the relevant doctrines of law, their relationship and their qualifications and limitations
- apply the law to the facts and problems presented, and
- reason logically to a sound conclusion from the premises adopted.

[33] Interestingly, the UVic Faculty of Law Handbook does not make any reference specifically to the skill of legal reasoning, or indeed generally what the intellectual skills are that a student will develop in law school. The closest is the statement, "Traditionally, law students are educated in substantive law and legal theory and are expected to learn lawyering skills during their articles of clerkship. The Faculty of Law at UVic believes that such a division of education is artificial and undesirable. The law school has, therefore, developed a number of opportunities for students to learn legal skills …." (p 16)

[34] An objective of the Qualification Examination is to "test a student's ability to apply legal reasoning" to substantive law, procedure and practice methodology. (p 14, *PLTC Blue Pages*)

of knowledge that they did years ago" (p. 2 of the November 5, 1998 memorandum). The only compulsory courses common to all Canadian law schools are contracts, tort, criminal law, constitutional law and property, yet the examination would test more than those.[35] The table below sets out the areas examined in the Nova Scotia examination and, for comparison, the subjects in the present Qualification Examination.

British Columbia	Nova Scotia
Commercial Law	Commercial transactions
Company Law	Business organizations
Creditors' Remedies	
Criminal Procedure	Criminal law
Civil Litigation	
Family Law	Family law
Estates (Wills and Probate)	Wills and probate
Real Estate	Real estate law
Law Office Management	
Professional Responsibility (associated issues)	Ethics
Taxation (associated issues)	
	Constitutional law
	Contracts
	Evidence
	Torts
	Trial procedure

Obviously there are some areas where an exact comparison is not possible, *eg* Civil Litigation (B.C.) and Trial Procedure (N.S.).

It would be very unfair not to specify areas. In British Columbia we can imply, from the coverage of the Qualification Examinations, that the areas listed above are seen as the necessary areas of the law. It may be that this list should be reviewed. At present, it seeks to cover the gamut of barristers' and solicitors' work. It is specifically based on law practice, not courses learned at law school. The Nova Scotia list appears to be based on a law school's curriculum – thus the inclusion of constitutional law, contracts, torts and evidence. It, therefore, appears more specifically to be testing what was, or should have been, taught at law school.

Here, the basic choice must be made – is the examination to test that those writing it have learned the breadth and depth of what should have been learned at law school, or is it testing that they have a foundation of framework substantive and procedural law *on which will be based* their training in the PLTC. This has a fundamental impact on the description of the examination, the specification of areas to be covered, the way in which the questions would be worded, and the materials provided to those seeking to write the examination.

[35] By way of comparison, the 11 compulsory "areas of knowledge" required for admission to practice in Australia are – criminal law and procedure, torts, contracts, property, equity, company law, administrative law, federal and state constitutional law, civil procedure, evidence, and professional conduct.

The materials students would need to prepare for the examination

Students intending to write the Entrance Examination would have to be provided with, or pointed to, materials upon which the examination was based.

At present, those preparing to write the Qualification Examinations are given a reading list, which specifies what sections of the *Practice Material* will be examinable. As well, students are examined on the *Criminal Code*, the *Legal Profession Act*, the Law Society Rules and the *Professional Conduct Handbook*. They are told that the content of Big Hall lectures, Activity Plan notes, assignments, and substantive and procedural handouts are examinable. In essence, the basic materials mainly comprise the Practice Material, but only designated parts.

In Nova Scotia a set of materials has been prepared specifically for the examination, know as the *Bar Review Materials*. It is stated that they are a tool only and are not intended to be used exclusively as the basis of preparation. Students are urged, where they find there are areas of law that are unfamiliar to them, to go to the texts, statutes and cases that define the law in those areas. The materials refer to a number of cases and statutes. The Nova Scotia materials are shorter than the Practice Material and are, essentially, a nut-shell guide to the law. They do not include how-to-do-it material, or precedents. In themselves, they are a detailed outline of what would have been taught at law school. For example, the section on Contracts is 49 pages in length.

This brings us to the practical issue of what materials would be provided to students planning to write the Entrance Examination. The options seem to be:

If the examination is to be a test of what was, or should have been, learned at law school

- To prepare a new set of materials, similar to the Nova Scotia *Bar Review Materials*, and covering the areas of law chosen for British Columbia.

If the examination is a test of framework substantive and procedural knowledge which will be the foundation upon which the PLTC will be taught

- To base the examination on selected parts of the *Practice Material*, such that those materials would be the basis both for the Entrance Examination and for learning in the PLTC. The reading list, together with the description of what is meant by framework knowledge, would enable the students to "find their way through" the *Practice Material* and focus solely on those parts of them that deal with framework knowledge. Over time, as the *Practice Material* were revised, there might be some division within each practice area covered (or each sub-area), with the framework knowledge being first set out, followed by a section dealing with transaction-based knowledge. I am not sure, however, that this division could work effectively, and it could lead to confusion.

OR

- To prepare a new set of materials, which culled out of the existing *Practice Material* the framework substantive and procedural knowledge. The *Practice Material* would remain as they are, that is, the framework knowledge would remain – it would, in effect, be found in both the new materials and the *Practice Material*.

A number of choices need to be made. An exercise would need to be conducted to determine if the existing *Practice Material* could serve as the materials for those planning to write the examination,

with an appropriate reading list guiding students to the appropriate parts. Only if that proved to be not feasible, should special materials be prepared. The cost and time involved in preparing, honing, and constantly revising a further set of materials would be considerable, and should be avoided if possible.[36]

Could students prepare for the Entrance Examination without tuition support?

It was pointed out to me during my consultations that the weaker students, undertaking the examination without the benefit of the *sub silentio* coaching in the PLTC, may well fail the examination. This could, in fact, result in even more students being before the Credentials Committee.

I heard more than once in my consultations that a number of students would find it very daunting and difficult to prepare for a quite major examination alone, and without support, including tuition. Many students, I am told, become considerably anxious about the existing Qualification Examinations. This is after they have had ten weeks of tuition. How much more difficult would they find it to approach the Entrance Examination without that support? The November 5, 1998 memorandum to the Credentials Committee states that "feedback from PLTC students suggests that they would prefer to learn substantive knowledge on their own time rather than in the classroom" (p. 8). I am not convinced that is the case for some students.

The November 5, 1998 memorandum envisages that a benefit of an entrance examination would be that some of the responsibility for learning substantive law would shift from the providers of PLTC to applicants. Students would manage their own learning and thus develop the very important skill of self-learning (p. 8). This is a desirable end, but perceptions can sometimes undermine the most laudable development. Whether intending students, on the whole, could prepare adequately alone, and without undue uncertainty, would need to be very carefully considered.

At law school students have considerable support and, indeed, many of them apparently choose courses for the very reason that they are not assessed by examination. It is true that they would have all undertaken, but some time ago, the Law School Admission Test (LSAT), which would have required them to prepare alone. However, that examination is not really a test of a wide range of specified material, and is rather a test of intellectual ability, the preparation for which does not require mastery of an extensive body of material.

At the PLTC students read the *Practice Material* to prepare them for what is being taught in the course. Thus the course provides them with a structured way to work through the material. As well, there is some integration of the learning, enabling easier understanding and mastery.

This then raises the question whether some tuition should be offered. A cottage industry could arise. The law schools themselves might provide some assistance in a special post-final-examinations course. Or the Law Society or CLES could provide a fee-paying "crash course" on a non-mandatory basis.

Another option would be to split the Entrance Examination into two or more parts, so that the parts could be taken in a block (similar to the Qualification Examinations) or could be taken at various times, spread out over a period, in order to reduce the "strain" of covering so much material in the one examination.

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[36] I am bearing in mind the assumption that the PLTC should continue to cost about $1.7 million annually.

When could students write the Entrance Examination?

The examination could be held at numerous times (and indeed places) throughout the year, to suit students. There would need to be a sufficient gap between the examination and the next session of the PLTC to permit marking etc. Students could write the examination more than once, but could not commence PLTC until they had passed it. This might result in a student deferring to a later session of PLTC.

But a specific problem arises for students finishing their law studies at the end of April and planning to go on to the next session of the PLTC, commencing just three or four weeks later. For these students there would be insufficient time to prepare for and write the examination, for the papers to be marked, marks provided to students and enrolment in the PLTC finalized.

There are several possible solutions.

The PLTC sessions could all be moved back by several weeks. Negative unexpected flow-on effects of this decision would need to be checked.

Another possibility would be, if the examination were to comprise a number of parts, to permit students to undertake say one of those parts whilst at law school, perhaps in the summer vacation at the end of second year onwards. The law schools may not find this attractive for various reasons. Also, it needs to be borne in mind that students need a good overview or the law or, as it were, a critical mass assembled, in order to approach an examination of this nature – so it should not be earlier than at the end of the second year. Law school is a time to think critically; I do not support moves to make it no more than a "trade school." It would also depend on the content of the examination. If it were to test practical knowledge, especially procedure, as at present, it would be unfair on students as their teaching at law school usually does not, quite properly, extend to this.

A third possibility would be to encourage those students who would find it daunting to undertake the examination immediately after law school not to enrol in the May session of the PLTC but defer until the next one, and use the time for preparation for the examination.

Are there access and equity issues to be considered?

The net effect of the introduction of an entrance examination would be that all students would commence the PLTC somewhat later, and some would commence it at least one session later than might have been possible. This could result in a loss of earnings at a time when maintaining an income flow might be critical for them. This could particularly apply to students from disadvantaged backgrounds. It is possible that this development could be portrayed as nothing more than an attempt by an insensitive profession to erect another barrier to entry, particularly affecting those from disadvantaged backgrounds.

Who would set, conduct and oversee the Entrance Examination?

The November 5, 1998 memorandum envisages that the Credentials Committee would take the initiative. Thus it refers to the hiring of an examination expert and the development of supporting materials. In regard to maintaining, overseeing revisions, conducting and grading of the examinations, the memorandum points to the Nova Scotia example of delegating to the examination consultant all of these steps except the actual conduct of the examinations.

In my view, and as part of my suggested re-visioning of The Articling Year, the whole process of training and examining in that year should rest with the one body. The natural body for that is the PLTC, albeit somewhat reconstituted. I therefore recommend that the responsibility for setting, conducting and overseeing the entrance examination, if it is introduced, should rest with the PLTC department of the CLES (whose "terms of reference" would be expanded and possibly even its title changed). This is not to say that the Entrance Examination would be part of the PLTC itself. It would be a separate but integrated component of The Articling Year.

However, I do support the idea of an examinations expert being engaged, both initially and on an ongoing but limited basis. Although the PLTC has had considerable experience in examination setting and marking, this examination would not simply be the existing Qualification Examinations held at a different time. In this context, it would be very useful to have a consultant work with PLTC personnel in developing the new examination, and monitoring its introduction and use in the early stages. It would, indirectly, be a form of professional development for them.

I do not support the implied proposal that responsibility lie with the Credentials Committee. However, I will be recommending that the PLTC itself be governed in a different way, which will effectively give the Law Society more direct involvement in its activities, including this one. As to this, see chapter 18.

I will also be recommending that the Entrance Examination, together with the PLTC, be evaluated in a more specific and ongoing way – as to which see chapter 18. Thus, its success in terms of the hoped-for benefits of transparency, effectiveness, efficiency and consistency (with other provinces) can be evaluated.