

and the Standards Review Committee.

The constituents in the accreditation process are the highest appellate courts in the States in which graduates seek admission, the Department of Education, the 177 law schools, the ABA and the law school applicants and students. Graduates from an ABA accredited law school fully satisfy the educational requirements for sitting the bar exam. If non-accredited law school graduates were allowed to sit the bar exams, the importance of the ABA's accreditation would be severely undermined. For a graduate to receive a government guaranteed student loan from the Department of Education the student must be enrolled in an ABA accredited law school. The ABA's accreditation program relies on the willingness of the law school community to accept and participate in the accreditation process. Law schools provide the volunteers who drive the accreditation program. A single nationwide accreditation system means that law schools do not have to respond to accreditation enquiries from more than one jurisdiction. The ABA also serves as a shield from government regulation of legal education and provides considerable funding for the accreditation process.

It is now beyond doubt that one of the ABA's objectives is consumer protection, where the consumers are the students and the clients of the graduates. The standards set by the ABA address organisational and administrative aspects, educational programs, faculty, admissions, library and physical plant. Not one new standard has

been adopted since their inception, whilst there have been some modification to existing standards. The author explains the process by which new standards are considered. One such body that may offer new standards is the Accreditation Committee, which is composed of two judges from the State's highest appellate court, a federal trial judge, two public members, a law librarian, a clinician and six law deans.

Site evaluations of law schools are conducted and are extremely important, as a negative accreditation finding can be challenged if there was no factual basis in the site inspection. The site teams are generally composed of legal educators and at least one librarian.

The achievements of the ABA through its accreditation program include the reduction of class sizes, positive discrimination programs, support for tenure and the general improvement of legal education. The accreditation program has stopped universities treating law schools like cash cows to be milked by the university overhead device.

#### **Reflections on the law school accreditation process**

R W Bennett

30 *Wake Forest L Rev* 2, 1995, pp 379-389

The most basic and obvious justification for an accreditation system is to set minimum standards of instructional competence, presumably in the interests of consumer protection.

The author focuses on the problems in the accreditation process which arise because the

process does not confine itself to consumer protection through assurance of minimum standards of instructional competence. The energy and resources are directed elsewhere. The major inquiry is whether it has the ability to fulfil its aspirations and whether the school is in fact doing so. Ironically, no question as to the school's satisfaction of the minimum requirements of instructional competence is raised in the accreditation process. Some of the accreditation criteria do not enquire as to whether the school meets a standard, but whether it has set a standard for itself and whether it is being met. Even more obscure are the accreditation criteria that the inspection team not only examines the grade point averages and LSAT scores of the student body, but their states of residency, college majors and feeder colleges.

The balance of the accreditation program does appear to favour the realisation of the aspirations of the school rather than assuring the minimum instructional competence of the school. No sanctions attach to the failure of a school to realise its aspirations unless that failure involves a violation of standards. As previously noted, there are no minimum standards, just aspirations. Consequently, the ABA, as watchdog, cannot effectively pursue the aspirations aspect as a serious form of consumer protection.

The centrepiece of each school's preparation for accreditation evaluation is self-criticism. The inspection team uses the school's self-analysis to alert itself to avenues of inquiry. Naturally, the self-study addresses the school's



aspirations, rather than minimum instructional competences. Whilst such self-assessment is vital for any self respecting law school, it does not address the issue of minimum instructional competence, which the inspection teams should be investigating. The justification, on the basis of cost, of the substitution of aspirational fulfilment for a minimum instructional competence investigation is not well founded and must be questionable. An inspection by the accreditation team may be unnecessary if the minimum instructional competence standard were used. In the end, is it terribly meaningful in terms of accreditation to ask a school if it is fulfilling its own aspirations? As aspirations are extremely arbitrary, the whole accreditation process as it stands is an invitation to arbitrariness and far from the consumer protection role that accreditation should provide. The aspiration fulfilment enquiry method should be purged from the accreditation process.

## INDIVIDUAL SUBJECTS/AREAS OF LAW

### **The study of law in Canadian management education: pedagogical goals**

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Business, like other forms of social interaction, requires a system of order to ensure a fair, predictable and efficient marketplace for buyers, sellers, firms, workers, regulators, borrowers, lenders and others. The legal consequences of

business decisions are important to the success of a business. Strangely enough, anecdotal evidence suggests that the teaching of law in management courses is in decline in Canada, despite the importance of law in business as reinforced during the 1980s, the glut of mergers, acquisitions and take-overs, demands for a level playing field and the rise in the importance of management and of intellectual property. However, several highly-publicised legal events in the last decade demonstrate that business schools should today be strengthening their business law curriculum.

The first goal of a business law course is to inform students what the law and the legal system is, as well as its sources, and to introduce the institutions of law. The second pedagogical goal is to develop proficiency in written and oral communication skills. Clear and persuasive speaking and writing are indispensable to modern business interactions. The third goal of a business law course is to afford the student some skills in taking the law and principles studied and successfully applying them in every day business contexts, while at the same time instilling a sense of when and how to consult a lawyer. It should not attempt to prepare students for complex legal problems.

The study of law will assist in the refinement of skills required for success in business. For instance, gathering relevant information, asking the right questions, identifying alternatives and exercising judgement will be facilitated by business law. In law there are often no obviously right or wrong answers, so a relentless

emphasis is placed on reasoning and analysis. Correct answers are those that are well reasoned. Such open reasoning is useful to business people in areas such as policy development, ethics, communication and negotiation.

Many legal frameworks, especially those in business, rely on voluntary compliance with laws, due to the difficulty and sometimes impossibility of policing those within the purview of the regulation. Business law may have the effect of motivating responsible corporate citizenship, as it is often only conscience that separates compliance from illegal behaviour. Such illegal behaviour will usually not be uncovered and so the conscience must be strong. Business law courses can go some way toward showing that business and accepted morality are not mutually exclusive. Economic efficiency will usually be the justification for immoral corporate decisions. Business law courses provide an unequalled forum to explore the ethical issues in the business environment.

### **The teaching of commercial alternative dispute resolution: problems and opportunities**

R Calver

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The author's motives for teaching a course on commercial alternative dispute resolution stem from his time as a practitioner. The ADR movement challenges the traditional role of the lawyer as a concerned advocate fighting to enforce the rights of the aggrieved client by means of a transformation into a dispute manager. Courses on ADR assist in dispelling the myth that most