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Teaching Legal Research in Canadian Law Schools: Are We Meeting the Needs of the Profession?

Abstract: In this philosophical article John Eaton from the University of Manitoba recounts the current legal education system in Canada and reflects on the issues involved in teaching legal research skills, including problems with where to base the training within the curriculum, and difficulties encountered in the migration from hard copy research, to current students' predilections for using electronic sources. Whilst based on the Canadian process his article has a wider application in relation to the "Google-generation" of students.
Keywords: Canada; legal research; academic law libraries

Introduction

Law is, at its core, a knowledge profession and one of the most fundamental skills required of a lawyer is the ability to find the appropriate information which will allow him to make correct evaluations of the state of the law on a particular issue. For this reason, all Canadian law schools take seriously the teaching of these skills to their students. Unfortunately, though, anecdotal evidence from the law firms who will eventually employ their graduates would suggest that they are doing a rather poor job of teaching these requisite skills. This is the result of two quite disparate factors: one related to the law school curriculum and the other with the perceptions and preferences of the students themselves.

John Eaton

Legal Education in Canada

Until about fifty years ago the training of lawyers in Canada was left to the various provincial law societies who operated their own law schools and the education received was a very practical one with emphasis on skills such as oratory, research, and analysis. Eventually each of the provincial law societies ceded the bulk of this process to universities and faculties of law have been established in twenty universities in eight of the ten provinces.

The faculties of law operate three-year programmes of legal study and award either an LL.B. or J.D. degree (the curriculum for both is identical). The emphasis during this academic portion of a lawyer's training is on inculcating the student in how to "think" like a lawyer and most of the programme is designed to develop the capacity for critical thinking, rather than the provision of specific skills.

Once a student has received her degree she will be hired for a one-year term called "articling" by a law firm and will essentially be an apprentice during this year learning the basic skills of being a lawyer. In Canada there is no distinction between barristers and solicitors. Both are simply referred to as lawyers. It is also during this articling year that the student will undergo a series of practical examinations for the local provincial law society. Therefore for a person to get called to the bar in Canada they need to have completed a law degree from a university, articled with a law firm and passed the provincial bar examination.

This model has worked reasonably well over the last five or so decades, but a common lament of many law firms upon intake of their articling students is the woeful state of some of their students' practical skills, with particular opprobrium heaped upon their poorly developed research skills.

Curricular problems

There is a fundamental question within legal faculties as to the appropriate place of skills-based instruction in the

curriculum. Many legal academics feel that the provision of skills is the responsibility of the articling process and therefore any vocational training required by lawyers falls to the law firms and the law societies. Others, myself included, accept that the key role of the academy is to enable students to understand the principles and workings of the legal system and to "think like lawyers" but also to equip them with a core of skills which will enable them upon graduation to not only think like lawyers but also to act and work like lawyers. Skills based courses are frequently discounted in the academy and are not always placed in the most appropriate points within the curricular stream.

If one is to isolate the reasons for the poor results in legal research skills training by faculties of law, one need look no further than the short shrift this particular skill is given. At many law schools legal research skills are recognised as a building block and are thus taught to first year law students at a very early juncture in their course of study. This is the first curricular problem. This training comes at a time when students are trying to absorb the specifics of an entirely new intellectual discipline and are taught about matters such as case finding at a time when they barely know *why* cases are published let alone *where* they are published. These preliminary exercises in first year often take the form of library "Easter egg hunts" wherein students roam the law library looking for specific cases or statutes. These attempts to teach students how to find cases seldom make a lasting impression on the student and the tools and methods of case finding are soon forgotten. Many faculties do have an upper year course often called "Advanced Legal Research" (this is the course that I teach) but as I jokingly tell my students, this course should truthfully be called "Remedial Legal Research" as they have retained so little of the smattering of research skills taught them in first year.

The second curricular problem is the manner in which substantive law courses are taught. Students attend lectures by their instructors and are walked through the various principles of the subject. They augment these lectures by readings, which are normally a multitude of cases on the various points covered by the course. The readings are usually provided by the professor in the form of a casebook, so students are led by the hand to the specific cases which elucidate certain principles of law and gain no understanding of the process of finding such cases for themselves. Furthermore, the students of these courses are often evaluated by way of an examination which requires little more than reviewing and remembering the principles articulated in the cases they were earlier provided and applying new facts thereto. These courses require essentially no research on the part of students. This ill equips them for articling. Upon receiving one's first file as an articling student the principal does not give the student the assignment accompanied with a casebook replete with all the cases one needs to know. As a result, articling students are often dumbfounded as to where to begin researching the files they have been assigned.

Not all law school courses are evaluated by way of examination. Many are called perspective courses and often deal with major issues of equity and public policy and look as much to the future of the law as to what has already been established. Such courses are almost invariably graded on the basis of a research project which is normally delivered in the form of an essay or presentation. These courses are important for developing in students a legal mind, but they too do little to prepare the student for the type of research work which will be expected of them as lawyers. These papers seldom involve research into the core, doctrinal legal sources so critical to the practice of law. For many students' perspectives course research will be the only research they will ever conduct in law school, giving them a skewed view of what is to come in their professional lives.

Problems with the students themselves

In the last fifteen or so years those of us who teach legal research methodologies to law students have had to negotiate two transformative developments. The first, the introduction of digital resources to the research mix, we handled with relative ease. We are in the midst of the second major shift and I fear our ability to manage this transformation might not be as successful. This change is the manner in which the students themselves expect and demand information to be delivered to them and their preferred methods of locating it i.e. the difficulties of teaching legal research to what, for lack of a better term, I shall call "the Google Generation." There is a zealously held belief among a strong majority of students today that all information is floating like a cloud above us and one need only run a butterfly net through it to retrieve it. That butterfly net is Google and research is simple and painless.

The problems with this belief are obvious to librarians and in fact anyone involved in serious legal research, but it is a perception that is proving almost impossible to refute. In the almost twenty years I have spent teaching these skills to law students it is only in the last few that I have noticed the enmity felt by my students to stalwart sources of legal research such as text books, indexes, tables of contents, and such tools as subject headings and catalogues.

The overarching intent of my Advanced Legal Research course, which is taught exclusively to third year law students about to graduate, is to replicate the articling experience as much as is possible in the classroom. I ensure that all research and writing assignments are based on the kinds of problems encountered in

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law offices as opposed to more academic, theoretical issues and I try to teach them research skills which are effective and efficient. I stress to them that it is strategically better to begin the research process by relying on secondary sources where much of the intellectual work has already been done for the student. Once students have read relevant portions of a core text on their issue they should realise that there are certain sub-issues associated with the problem and often they will become aware of a handful of guidepost cases which also frame the issue. I reiterate that it is far easier to have this preliminary analytical work done for them by someone else before beginning the more difficult job of applying it to the situation at hand. Despite making what I believe to be a compelling case for beginning one's research by reference to an appropriate text, I get little buy-in from the students. To them this is unnecessary, superfluous work when all that is required is running a handful of search terms through Google and seeing what emerges.

In the last few years I have noticed a pronounced disinclination on the part of my students towards using print materials. If an item is available in both formats, the digital resource is invariably preferred; if it exists only in print, it is usually rejected. Training students on the use of the library catalogue has become a waste of time and it is even difficult to get students to use one of the many online sources which attempt to organise the law by topic, sub-topic and issue in the same manner as their print progenitors. Apparently working one's way through a series of online subject headings and sub-topics is too slow and cumbersome and simply tossing a few salient terms into Google is still better than relying on the intellectual effort of others. It is also noteworthy that the aforementioned salient terms are in fact seldom salient at all. As this method of research provides little understanding of the legal issues at play, students tend to search only factual terms from their problem without the equally important legal component of the issue. Whilst I acknowledge that there are obvious advantages to digital access over exclusive use of print, the ability to research from home in the middle of the night being one, it remains the case that ineffectual Google searches are preferred over remote access to online commentaries, texts, indices and digests and thus, the problems of physical proximity to a library are not at the root of this phenomenon. There is a mindset which believes that the "answer" to a research problem is retrievable with a few clicks of the mouse and it is proving to be particularly difficult to overcome this naïve conviction.

Legal research is a process that involves a number of steps. It usually begins with secondary sources from which one gleans the basics of the issue, is introduced to some sub-issues and sees examples of their application in a range of scenarios. The researcher internalises this information, digests it for a spell and then takes this knowledge a little further and often seeks out more cases or commentary on the matter, starting to refine the research to be more applicable to the facts and context of the immediate project. In simply throwing factual terms into Google and then wading through the myriad of irrelevant results, this very important process is ignored. At present the biggest challenge facing instructors of legal research is how to balance this need for speed of data recovery while still preserving the integrity of the research process.

Conclusion

If Canadian law schools wish to graduate students with research skills in keeping with the demands of the profession, they need to make a few curriculum changes. One suggestion is to remove legal research training from the first year altogether and reserve that introductory year for immersing the students in the culture of legal study, thus enabling them to understand the process by which cases and statutes are created, interpreted, and applied. Legal research training and, in fact, other skills training could then be moved to the second year and be part of a continuum of skills acquiring activities. Most law schools have some sort of compulsory mooting assignment in the second year. Were it to be conjoined with a suite of practical skills, the necessary context for learning legal research would be provided. A second year programme, where a legal problem is assigned, the student researches it, writes a memorandum about it, drafts pleadings pursuant to it and engages in oral advocacy by way of a mock trial, would be a most meaningful undertaking for students. A number of Canadian law schools have such processes in place; those that do not should be encouraged to follow suit.

While the curricular problem is reasonably straightforward to sort out, there is cause for much more pessimism as regards the students' research preferences. The challenge one is faced with when advocating the more appropriate and expansive research process is this: we are attempting to convince our students that "slow, expensive, and difficult" is a better research method than "fast, cheap, and easy". It has been my experience that in almost all areas of human endeavour "fast, cheap, and easy" eventually wins out over "slow, expensive, and difficult". Therefore the solution would appear to be that we must continue to teach the requisite skills in a way that demonstrates effectively and convincingly that throwing imprecise terms into Google and wading through voluminous results might in truth be the slower, more expensive (given the value of a lawyer's time), and more difficult of the two approaches. Conversely beginning one's research with established, authoritative sources which enable you quickly to understand the terrain of your legal issue and point you toward instructive primary sources might just be faster, cheaper, and easier than first believed.

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Biography

John Eaton is Librarian & Associate Professor of Law at the University of Manitoba in Winnipeg, Canada. Such is his belief in the importance of beginning legal research with secondary sources that he recently co-authored the book, *Eaton & Le May: Essential Sources of Canadian Law*, a guide to the principal resources in all areas of Canadian law. He thanks the following fellow law librarians for their thoughts on legal research instruction: Neil Campbell, John Davis, John Sadler, Donna Sikorsky, and Dawn Urquhart.

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Life-long Learning – How Legal Research is Taught at Melbourne University

Abstract: Natalie Wieland, who teaches legal research skills, reflects on her own experiences as a law student undertaking legal research using only paper-based searches and compares them with her current experiences training completely digitally-aware law students in a world heavily biased towards electronic resources.
Keywords: Australia; legal research; academic law libraries

Introduction

This paper recalls my experiences as a law student at Monash University in the early 1990's and describes my current role as the Legal Research Skills Adviser at the Law School at Melbourne University. It reflects my observations through the eyes of a student (when all research was done in hard copy) to the eyes of a professional whose role it is to teach legal research to law students who look at the world through Google.

How to become a lawyer in Australia

In Australia we do not have a national profession, so the requirements to become a lawyer vary slightly in each state. I am Victoria-based and therefore will provide a very brief overview of the requirements in Victoria. Traditionally it has been necessary to complete a Bachelor of Laws which takes between four to five years. Within this degree there is a set of core subjects that must completed and these include: legal process, torts, contract law, property law, constitutional law and administrative law and the rest is made up of elective subjects.

Currently I am working at Melbourne University and it recently introduced a new approach "The Melbourne Model"[1] where it is necessary to complete an undergraduate degree before commencing the JD[2] which is a three year post-graduate degree. The JD course comprises 24 subjects, of which 17 are compulsory. Students usually remain in the same cohort to complete the compulsory subjects. The remaining subjects are chosen by students from a wide range of options available for the Melbourne JD and the Melbourne Law Masters.

The role of legal research at university pre-computers

Back in the dark ages when I completed my law degree in 1993, all legal research was done using hard copy sources. This meant I conducted all my research in