2023

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Citation Details

Cahterine Dauvergne, "New Crossroads and the Opportunity for a Crisis: The State of Canadian Legal Education" (2023) 101:3 Can Bar Rev 708.

NEW CROSSROADS AND THE OPPORTUNITY FOR A CRISIS: THE STATE OF CANADIAN LEGAL EDUCATION

Catherine Dauvergne[1]

This article considers the challenges facing Canadian law schools and compares the current state of affairs to that analyzed in the 1983 Arthurs Report. The opening sections describe how Canadian legal education is globally unique because of the tacit agreement between law schools and the legal profession that limits the number of law school seats in Canada and helps ensure the success of law schools and law students. On the fortieth anniversary of the Arthurs Report, the article concludes that legal education in Canada is overdue for a new mapping of its strengths, challenges, and future directions that takes the ambition, breadth, and collaborative approach of the Arthurs Report as an inspiration.

L'auteure de cet article jette un regard sur les défis qui se posent pour les facultés de droit au Canada, et fait la comparaison entre l'état actuel des choses et l'état des lieux en 1983 d'après l'analyse du rapport Arthurs. Dans les premières parties, l'auteure décrit ce qui rend le système canadien d'enseignement du droit unique au monde : l'entente tacite entre les facultés et la profession juridique qui limite le nombre de places sur les bancs des facultés de droit au pays contribue au succès des facultés comme des étudiants. Soulignant les quarante ans du rapport Arthurs, l'auteure conclut que l'enseignement du droit au Canada est mûr pour une redéfinition de ses forces, de ses difficultés et de ses orientations futures, avec comme point de départ l'ambition, l'envergure et l'optique de collaboration exprimées dans le rapport Arthurs.

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1. Introduction

There is no crisis in Canadian legal education. Rather, there is an ongoing grumbling in many quarters about something being wrong and needing to be fixed. In little more than a decade, a number of reports have called for significant changes, three new law schools have opened, the Federation of Law Societies has taken on the role of law school regulator, and a number of law schools have faced or are facing financial challenges.[2] There is so much going on in Canadian legal education that it is plausible to suggest that no crisis has been declared because such a proclamation would require focusing on just one element in this turbulent landscape.

There is an array of concerns vying for attention, any one of which potentially has crisis proportions. Issues squarely on the agenda include the imperative to Indigenize legal education, the challenges of greater diversity and inclusion, the stagnancy of legal pedagogy, the turn to experiential learning, and the unique funding environment, to name only matters around which there is broad consensus that they belong on such a list. Added to these concerns are matters that arise because law schools belong to universities, and universities are changing. From this direction, the challenges include a shift in the model of government support, the move to a consumerist model among students, an altered relationship with philanthropy, a surging mental health crisis, and the first generation of students for whom a university education will not serve as

[2] See e.g. "Futures: Transforming the Delivery of Legal Services in Canada" (2014), online (pdf): *Canadian Bar Association* <https://tinyurl.com/ysnyzpva> [perma.cc/BTT8-56TT]; Federation of Law Societies of Canada, "Legal Education: Building a Better Continuum Together—Report from the 2016 Annual Conference (2016) [on file with author]: *Federation of Law Societies of Canada*; Jordon Furlong, "A Competence-Based System for Lawyer Licencing in British Columbia" (10 May 2022), online (pdf): *Law Society of British Columbia* <https://tinyurl.com/vj3zcban> [perma.cc/VC5B-AXE9].

a guarantee that they will be better off than their parents. From the legal profession direction, another set of challenges emerge: the now-perpetual crisis of access to justice, the consequences of a technological revolution, the pressures created by regular adjustments of admission to practice pathways, and the issues that are brought to the doors of the profession by everything above, including a reckoning with the long-hidden mental health toll of some traditions of legal practice.

The challenge facing Canadian law schools at the moment is to fit all the pieces together. Only by keeping all the complications in view is it possible to map the state of Canadian law schools and determine where this map leads. The last time such a map existed was in 1983, when what has become known as the *Arthurs Report* was published.[3] Of the many remarkable features of the *Arthurs Report*, two are especially noteworthy in 2023. The first is the simple fact of its existence—a sustained examination of legal education in Canada led by a pre-eminent scholar and gifted university administrator—is more remarkable with each passing year, as it seems less and less likely that such a feat will ever be repeated. (None of the major recent reports have been written by legal educators[4]). The second inspiring feature for this moment in time is the *Report*'s attention to keeping all the pieces in the picture; this stealth manoeuvre allowed a report with a mandate about legal research to render a deep and rich account of Canadian legal education as a whole, and thus to articulate how basic structures of legal education shape the research atmosphere and much else besides. Given that a key argument I advance here is that without an aspiration to this type of breadth, any diagnosis of the present will be deeply insufficient, the *Arthurs Report* is an important inspiration.

The twentieth anniversary of the *Arthurs Report* in 2003 was marked in various ways across the legal academy.[5] The absence of a similar acknowledgement of the fortieth is noteworthy: I believe it is not so much the case that its conclusions no longer resonate, but rather that the echo through time has grown fainter and the cacophony of contemporary concerns louder. In a keynote address at one event marking the 2003 anniversary, Professor Roderick Macdonald concluded by talking about crossroads:

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3 Consultative Group on Research and Education in Law, *Law and Learning: Report to the Social Sciences and Humanities Council of Canada*, (Ottawa: Information Division of The Social Sciences and Humanities Research Council of Canada, 1983) [The Arthurs Report].

4 See note 2.

5 For example, the Canadian Law and Society Association's mid-winter meeting in 2003 revisited the Arthurs Report, and papers were published in Vol 18, Issue 1 (2003) of the Canadian Journal of Law and Society.

> When there are no crossroads, when there are no longer any important choices to be made, there will no longer be any legal research and legal education worth pursuing.[6]

In 2023, there are new important choices facing legal educators. In addition to all the external pressures facing Canadian law schools, there are persistent calls from within for changes.[7] Any one of these pressures could constitute a choice in the sense Macdonald describes. The goal of this article is to begin mapping those choices, drawing on the *Arthurs Report* as an inspiration about how such a map ought be constructed. One choice at this juncture is certainly to declare a crisis. But unless we are able to use such a declaration as skillfully as Harry Arthurs did in the early 1980s, it would be a risky endeavour indeed to do so.[8]

The hardest part of figuring out a way forward is emulating the *Arthurs Report* achievement of keeping all the pieces in the frame. Without this, potential reform efforts will likely flounder in the face of arguments that not all aspects have been considered and the reality of unintended consequences. I begin with some stage setting, arguing that Canadian legal education is unique in the world, and both very good and very vulnerable. The next section continues setting the stage by addressing matters of pedagogy and law students. I subsequently turn to discuss issues arising from the relationship of law schools with the universities that support them, and I turn next to addressing challenges that emerge from the relationship between law schools and the legal profession. Almost every matter of concern for Canadian legal education at present overlaps any categorization that one could develop. This overlap risks paralyzing both analysis and subsequent action. In attempting to resist this fate, the *Arthurs Report* proves as useful as it was forty years ago.

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6 Roderick Alexander Macdonald, "Still Law and Still Learning—Quel Droit et Quel Savoir" (2003) 18:1 CJLS 5 at 30 [Macdonald].

7 For three recent important examples see: the most detailed empirical work on Canadian legal education since the Arthurs Report, Annie Rochette, *Teaching and Learning in Canadian Legal Education: An Empirical Exploration* (DCL Thesis, McGill University, 2010) [Rochette] [unpublished]; see also a major empirical work grounded in philosophical understandings of legal education, David Sandomierski, *Aspiration and Reality in Legal Education*, (Toronto: University of Toronto Press, 2020) [Sandomierski]; and reflecting on the 2007 Carnegie Report on legal education in the US, Michelle LeBaron, "Is the Blush off the Rose? Legal Education Metaphors in a Changing World" (2016) 43:1 JL & Soc'y 144 [LeBaron].

8 See LeBaron, *supra* note 7 at 163–165, on how declarations of crises have failed to bring about change.

2. Setting the Stage: What Makes Canadian Legal Education Unique

Unlike legal education in every other English-speaking common law country, Canadian legal education is tied closely and directly to the legal profession. The tie is guaranteed by the requirement that to be admitted to the practice of law, a candidate must *both* complete a law degree *and* a term of articling apprenticeship, in addition to a formal assessment of some sort set by a provincial law society. While other systems have elements of these requirements, none has all of them. In the United States, which, like the Canadian legal profession, is regulated at the subnational level and thus varies widely, there is broadly speaking no requirement for an articling period. In England and Wales, a law degree is not a strict requirement for admission to practice. Australia and New Zealand do not require articling.

This feature of Canadian legal education has far-reaching consequences for legal education reform and the relationship between law schools and the legal profession. Principally, in tandem with the fact that in English-speaking Canada, law is (almost always) a second degree, it keeps the number of seats in law schools low and ensures a perpetual debate about who is in charge of 'real' legal education. In England or Australia, where large numbers of law graduates do not enter the legal profession, the question of where law graduates end up within the profession is a much less consequential metric, and the degree to which legal education prepares students for the practice of law is similarly less of a talking point.[9] In the United States, where, as in Canada, law school is typically something one undertakes after doing undergraduate study, law school is viewed as a pathway into the profession and not dependent upon finding an articling position prior to qualifying for practice.[10] In the United Kingdom, the United States, and Australia, there are many more law school seats available (per capita) than in Canada, in part because of the different nature of the relationship with the profession.[11]

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[9] For an overview of pathways to qualifying in England and Wales see: "Becoming a Solicitor," online: *The Law Society* <https://tinyurl.com/bde5ksat> [perma.cc/DN4C-WMLT]. Regarding Australia see: "Becoming a Lawyer in Australia," online: *Australian Bar Association* <https://tinyurl.com/2j6jhc92> [perma.cc/XSC6-TFTE]. Regarding employment with a law degree in Australia, see "Data Regarding Law School Graduate Numbers and Outcomes" (2018), online (pdf): *Council of Australian Law Deans* <https://tinyurl.com/cmmhw2e2> [perma.cc/W8FU-QH4Q]; in the UK employment trends for law graduates can be viewed at: "Entry Trends," online: *The Law Society* <https://tinyurl.com/97dvnkhy> [perma.cc/X4TA-WYTU] [UK Trends].

[10] See "Legal Education," online: *American Bar Association* <https://tinyurl.com/4fpxhadn>.

[11] Canada has 23 universities that offer law degrees and a population of approximately 40 million. Australia has 39 law schools, almost all larger than Canadian law

In addition to this difference in how education is structured for Canadian and American students, it is also noteworthy that from the point of view of their research mission, Canadian law schools share more with their United Kingdom and antipodean counterparts than with the American legal academy. Even at the most prestigious law schools in the United States, it is not the norm to have completed doctoral studies (or sometimes, any graduate studies) before taking up a faculty position (as is now the case in Canada and has been so elsewhere for much longer).[12] Additionally, the American law review publishing system is unique in the world because it does not generally use peer review. The result of these distinctions is that while from a student point of view, Canadian law schools have more in common with US schools than with any other, from a faculty and research point of view, Canadian law schools are more akin to those elsewhere.

Only in Canada is there is a more or less 'tacit' agreement between law schools and the legal profession that the number of people admitted to law school ought to bear some resemblance to the number of new lawyers that the profession 'needs,' or at least to the number of articling positions that can feasibly be created. This tacit agreement keeps the number of seats in law schools low, which in turn keeps up intense competition for admission. Further, while there are important distinctions between legal education in predominantly French civil law Canada and legal education in predominantly English common law Canada, the tacit agreement operates in the same way. This factor, in combination with the dominance of the common law tradition in Canadian public law, means legal education in civil law Canada has more in common with that in common law Canada than in any other civil code jurisdiction. Even in an article as long as

schools, and 25 million people. The UK has over 100 law degree programs and a population of approximately 67 million. The United States has 199 ABA-accredited law schools, approximately 30 that are non-ABA-accredited (many of these are state accredited) and a population of 331 million. This number of schools is only moderately larger per capita than Canada's, but many US law schools are larger than Canadian schools. Harvard's first-year class last year was 559; Columbia's was 402; and Michigan's was 336. The University of Ottawa has the largest first-year law class in Canada, with approximately 400 students admitted across its common law and civil law and French and English programs, but no other Canadian law school admits more than approximately 200 students. Some schools are much smaller, with the University of Victoria, Thompson Rivers University, and Toronto Metropolitan University admissions closer to 100 annually.

[12] Lynn M LoPucki, "Dawn of the Discipline-Based Law Faculty" (2016) 65:3 J Leg Educ 506. LoPucki reported that 21% of new hires from 2011–2015 at US law schools had PhDs, a significant increase. Regarding Canada see, Craig Forcese, "The Law Professor as Public Citizen: Measuring Public Engagement in Canadian Common Law Schools" (2015) 36 Windsor Rev Legal Soc Issues 66 at 76. Forcese reported that 49.9% of Canadian common law professors hold doctorates (looking at all existing faculty, not only new hires where the % is much higher).

this one, I cannot do justice to the additional challenges facing French Canadian civil law legal education, which are even more complicated because of the hegemony of the common law and the English language.

As much as anything else, the tacit agreement that limits law school seats in Canada fosters very high standards in Canadian legal education: those admitted are highly capable students who have demonstrated success as university students. This fact alone ensures an elite. Canadian law schools admit highly motivated, highly successful students. It almost does not matter how well or poorly law schools educate these students.[13] They have proven at the outset that they can and will succeed. Accordingly, perhaps the greatest strength of Canadian law schools is the immense privilege they benefit from in being able to admit, year after year, stellar students.

On the other hand, it is precisely the same feature, the close relationship with the legal profession, that makes Canadian law schools more vulnerable than those elsewhere. The need to place students in articling positions to complete their qualifications ensures that every economic bump that affects the profession is translated more or less directly into law schools themselves. This is also why two of the three newest law schools have built-in programs that provide an alternative to articles.[14] This relationship cements a sharp check on any impulse for law schools to address financial stresses by simply increasing enrolment, it gives the profession an interest in decisions about class sizes and new schools, and it influences conversations about pedagogy and curriculum.

It is also vital to emphasize that I am not suggesting that the relationship with the legal profession is a bad thing for Canadian law schools: on the contrary, it ensures their greatest strength by guaranteeing the justification for elite admissions. But the relationship complicates things and creates a dynamic not found in the jurisdictions we often look to as comparators. The small number of seats in Canadian law schools

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13 Robert N Leamnson, *Thinking about Teaching and Learning: Developing Habits of Learning with First Year College and University Students* (New York: Routledge, 1999) at 2.

Leamnson writes that:

> Highly motivated students in their last year of college work might still appreciate variety and other results of a well-planned pedagogy, but they do not, by and large rely on it to learn. They only need to be told what's important.

It is precisely these students who are admitted to Canadian law schools.

14 Lakehead University's Bora Laskin School of Law has an integrated practice placement program that exempts graduates from the articling requirement. Toronto Metropolitan University's Lincoln Alexander School of Law has a Law Practice Program that serves the same purpose.

also results in fewer legally trained individuals in Canadian society than in those comparator countries. This fact too has consequences, which deserve further consideration, but two worth briefly noting include enhancing the profession's elite status and reducing options for addressing public legal education and access to justice initiatives by mobilizing a cadre of legally educated people who are not practicing law.

Back in 1983, the *Arthurs Report* pointed out that many baseline dilemmas of legal education in Canada could not be addressed without sustained and meaningful collaboration with the legal profession.[15] This point is perhaps even more important today.[16] Given the (again, very distinct) history in this country of legal education only slowly and belatedly becoming a university rather than a profession-based endeavour, the lack of collaboration is not surprising.[17] Indeed, the present state of cautious, tentative, and quite likely suspicious engagement between the legal academy and the profession is foreseeable. But it is well past time to reset this relationship in the hopes of making genuine progress.

3. Setting the stage: what happens at law school

One of the oft-repeated tropes of legal education is that if you entered a law school in the early or mid-twentieth century, it would not be significantly different than what you would find today. First-year students sitting in lecture theatres listening to lessons about torts, contracts, criminal law, constitutional law and other predictable subjects.[18] It is hard to defeat this trope because significant parts of it ring true. Not all law schools in the English-speaking common law world have the same core curriculum, but any law professor at one of these schools could list the likely compulsory subjects very quickly. The great karmic wheel of curriculum reform rolls on, and the size of the compulsory core grows and shrinks, but the parameters

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15 The Arthurs Report, *supra* note 3 at 53.

16 See "Principles on the Role of Law Faculties in Educating Lawyers" (July 2022), online (pdf): *Canadian Council of Law Deans* <https://tinyurl.com/3rxn7b7u> [perma.cc/V4GU-FXKT].

17 See the Arthurs Report, *supra* note 3 at 11–12 for a review of this history. For detailed accounts see William Wesley Pue, "Common Law Legal Education in Canada's Age of Light, Soap, and Water" (1995) 23 Man LJ 654 [Pue]; Clifford Ian Kyer & Jerome Bickenbach, *The Fiercest Debate: Cecil A. Wright, The Benchers And Legal Education In Ontario, 1923–1957*, (Toronto: University of Toronto Press, 1987).

18 Rochette, *supra* note 7 at 10; Sara Rankin, "Tired of Talking: A Call for Clear Strategies for Legal Education Reform: Moving Beyond the Discussion of Good Ideas to the Real Transformation of Law Schools" (2011) 10:1 Seattle J for Soc Justice 11 at 17–18; Harry Arthurs, "Paradoxes of Canadian Legal Education" (1977) 3:3 Dal LJ 639 at 645, (where he writes that first year courses in Canadian law schools "have largely remained unchanged since the dawn of time").

are relatively clear. In addition, while there have been significant criticisms of the lecture model for legal education, and while there are a great number of creative, innovative, and dedicated educators in Canadian law faculties, we would be hard-pressed to make the argument that the dominant mode of teaching in Canadian law schools is something other than lecturing, or even that some other delivery mode seriously competes with the lecture for dominance.[19]

So, what's the problem? Well, possibly nothing if one is content with the status quo. There are scads of pedagogical research establishing the limitations of lecturing as a method for deep and long-lasting education.[20] But it has not deeply penetrated the Canadian legal academy. I suggest this happens for two reasons. First, this occurs because Canadian law students are so strong that they will learn well regardless of how little attention we pay to pedagogy. Second, this occurs because what law schools teach more than anything else is a method of reading and analysis.[21] It is not

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[19] Regarding critique of lecturing in legal education specifically, two well developed analyses are Marlene Le Brun & Richard Johnstone, *The Quiet (R)evolution: Improving Student Learning in Law*, (Sydney, Austl: Law Book Company, 1994) at 10–12 [Le Brun & Johnstone]; and Rochette, *supra* note 7 at 50–52. Rochette's empirical work showed that most law teachers in Canada lecture for the majority of class time but that there are significant variations in how lectures are conducted (*supra* note 7 at 157). For other critiques see Peter Sankoff, "Taking the Instruction of Law Outside the Lecture Hall: How the Flipped Classroom Can Make Learning More Productive and Enjoyable (for Professors and Students)" (2014) 51:4 Alta L Rev 891 [Sankoff]; Gemma Smyth, Samantha Hale & Neil Gold, "Clinical and Experiential Learning in Canadian Law Schools: Current Perspectives" (2017) 95:1 Can Bar Rev 151 [Smyth et al].

[20] This is principally because lecturing alone promotes surface learning rather than deep learning and its lessons are therefore more easily forgotten. See Le Brun & Johnstone, *supra* note 19; Rochette, *supra* note 7 at 46–62. In Nira Hativa, *Teaching for Effective Learning in Higher Education* (Boston: Kluwer Academic Publishers, 2000) at 56–57, Hativa writes:

> … most students cannot learn effectively by being passive listeners… Rather, they learn well only when they are active in the learning process, when they construct their own understanding, and when they use what they are taught to modify their prior knowledge.

[21] Rochette's work (Rochette, *supra* note 7) provides the most complete picture of "typical" pedagogy in contemporary Canadian law schools, which not surprisingly falls somewhere between the lecture model that dominates in Australia (see Le Burn & Johnstone, *supra* note 19), and the case method that the Carnegie Report refers to as the 'signature pedagogy' of legal education in the United States (William M Sullivan et al, *Educating Lawyers: Preparation for the Profession of Law*, (San Francisco: John Wiley & Sons, 2007) at 47–86 [The Carnegie Report]). In Rochette's view, the most typical addition to lectures in Canadian law schools is a question and answer session, where the instructor often answers their own questions. Sandomierski captures the flavour of this pedagogical method when he writes of the emphasis Canadian contract law professors place on teaching what he refers to as "legal reasoning" (Sandomierski, *supra* note 7 at 16–23).

the substance of any particular lecture or course that provides the lasting learning of a legal education, but rather the method demonstrated in crafting those lectures. As such, mastery in learning law does not come from understanding any particular case, lecture or even subject: it comes from learning a method for which lecturing provides myriad examples, incessant repetition, and the consistency across varying subject matter reinforces the underlying point. The lecture serves, only partially or temporarily, to convey its substance. Its deep pedagogy is a demonstration of the method.[22] It owes part of its endurance to how well it serves in this role.[23]

The problem with this understanding is that failing to be up-front about our pedagogy creates an aura of mystery; it makes it hard to learn pedagogy; it confuses students; and despite all that can be said for it, it still over-relies on the excellence of the students coming through the door.[24] Canadian legal education has escaped the widescale criticism that Australian legal education attracted in the late twentieth century, leading to significant pedagogical (if not curricular) changes in that country.[25] It has also escaped the competition of the crowded marketplace for legal education exemplified in the United States.[26]

There are two problems with the unexamined embrace of the lecture model. First, because much learning at law school occurs mysteriously, we are not well prepared to assist when (a few) students struggle. Second, when law schools come to the point when they want to prioritize educational goals that are beyond the traditional method, they are not well equipped to make this pivot. The first point requires a barrage of caveats. Many professors realize the limits of lectures, and while very few have

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22 See Sandomierski, *supra* note 7.

23 See Le Brun & Johnstone, *supra* note 19 at 12, they would also add that lecturing is "by far the easiest" pedagogy available to law teachers.

24 The extent to which this legal pedagogy is not clearly articulated is captured by those who refer to learning legal analysis "by osmosis" (See The Carnegie Report, *supra* note 21 at 47; Rochette, *supra* note 7 at 199–200, 222); or suggest they are creating a "decoder ring" for law students (David Kennedy & William W Fisher III, eds, *The Canon of American Legal Thought*, (Princeton, NJ: Princeton University Press, 2006) at 1–18.

25 See Dennis Charles Pearce et al,, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission*, (Canberra: Australian Government Publishing Service, 1987); See also, Le Brun & Johnstone, *supra* note 19.

26 See Derek Muller, "A Continuing Trickle of Law School Closures" (22 March 2019), online (blog): *Excess of Democracy* <https://tinyurl.com/5n8vs4ww> [perma.cc/W4PH-ZDBW]; regarding a crisis moment in American legal education see The Carnegie Report, *supra* note 21 at 1–20.

abandoned the model completely, many have tempered it somewhat.[27] There are many excellent lecturers in Canadian law schools, and a good number of law professors are very thoughtful and motivated in pastoral care for struggling students. A further caveat is that an important part of what makes for success at law school is writing well. Law schools either do not teach writing at all, or they teach it very briefly.[28] This issue is related to the lecture model only that listening to a lecture is a very poor way to learn or practice writing skills.[29]

The second point—the difficulty of adapting the lecture model to other teaching goals—is directly linked to what we now want and need law schools to deliver. The most important imperative here is the need to equip new Canadian lawyers with the knowledge and skills required to work in a legal system that must urgently transform itself to address past and present harms to Indigenous peoples. The 2015 final report of Canada's Truth and Reconciliation Commission contained 94 Calls to Action.[30] More than half of these calls aim at the law or the legal system, and two asked for specific actions from law schools and law societies.[31] There is no dispute that Canadian law has a central role in addressing the historical injustices of our colonial legacy. But there is a wide range of opinions about the best way forward. My view is that the greatest risk is for law schools to squander time and resources on searching for the one right approach and they should instead plunge forward trying a wide variety of options.[32] Certainly, the list of work to be done must include:

- admitting more Indigenous students;

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27 In Rochette, *supra* note 7 at 172–173, Rochette concluded that most of the lecturing she observed in her she would categorize as "engaged lecturing." For examples see Kim Brooks, "Fostering Self-Development, Passion and Engagement, and Stress Management in Large Law School Classrooms" (2021) 8 Can Leg Education Annual Rev 1 [Brooks]; Sankoff, *supra* note 19.

28 A legal research and writing module or course is part of many curricula in Canada, usually awarded a small number of credits. In this pairing, the emphasis is almost always on legal research. Many 'substantive' courses are assessed primarily through exams where writing skill is de-emphasized.

29 In Le Brun & Johnstone, *supra* note 19 at 194–196, they also write of how writing functions as a pedagogy in and of itself, which is lost when lecturing is over-relied upon.

30 Truth and Reconciliation Commission of Canada, "Calls to Action" (2012), online (pdf): *National Center for Truth and Reconciliation* <https://tinyurl.com/2nbp8tft> Permanent link to this record: [https://publications.gc.ca/site/eng/9.801236/publication.html].

31 Call to Action 27 is directed to the Federation of Law Societies of Canada, and Call to Action 28 to law schools.

32 See also, Catherine Dauvergne, "The Challenge of the Truth and Reconciliation Calls to Action" (2018) 76:5 The Advocate 711.

- hiring more Indigenous faculty members and other staff;
- adapting law schools to ensure these new members have a home there;
- adding compulsory substantive learning;
- expanding and valuing as much additional learning as possible; and
- ensuring that students understand histories and learn to genuinely appreciate the reality of cultural differences

It is a long agenda. We must be willing to try, to err, to make new attempts.

The single biggest obstacle for law schools in this undertaking is that Canadian law schools teach Canadian law.[33] However much it is tempered, mixed, diversified, and critiqued, this will continue to be true. Canadian law has been a principal tool of colonization and continues in this role. Even as law schools and law societies across the country focus on implementing the TRC Calls to Action, the *Indian Act* remains in force, the over-incarceration of Indigenous people continues in full force, child protection laws are used daily to remove more Indigenous children from their families than any other children in Canada, land claims and identity claims are *fought* in courts across the land every week and will be for the foreseeable future. Colonization's mark is everywhere in this system. Teaching Indigenous students to be good lawyers and providing a true home for Indigenous scholars confronts this fact daily. For some people, this cognitive dissonance is somehow manageable. But for others, it is insidiously harmful in ways that have not yet been fully articulated, let alone widely understood.[34] Doing justice in the face of this irreconcilable fact is the hardest thing for law schools in addressing the imperative to become places where Indigenous students, and scholars, thrive. It is also an enormous challenge for our largely unexamined dominant pedagogy.[35]

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[33] The University of Victoria's innovative JD/JID program, which began in 2018, teaches the law of Indigenous legal orders alongside Canadian law, which is an important counter to this statement.

[34] For an important contribution to articulating this problem see Aaron Mills, "The Lifeworlds of Law: On Revitalizing Indigenous Legal Orders Today" (2016) 61:4 McGill LJ 847 [Mills].

[35] On the importance of using Indigenous frameworks as legal pedagogy see John Borrows, "Heroes, Tricksters, Monsters and Caretakers: Indigenous Law and Legal Education" (2016) 61:4 McGill LJ 795.

This is vitally important. Given that the often most valuable learning at law school is the unarticulated reinforcement of a method for reading and analysis, we have not directly grappled with how that method embeds key aspects of the legal system that are complicit in hegemonic practices. To the extent that our pedagogy is unexamined, these effects are unexamined. Without addressing pedagogy, we cannot examine, understand, and hope to address these harms. Those on the vanguard of change understand how important it is, but the habits of unexamined pedagogy over decades generate a form of resistance even among those who do not intend resistance.[36]

A similar but distinct point can be made about other calls to diversify law schools. These calls come from a wide range of voices and share much with calls to increase diversity and inclusion across the academy.[37] Most Canadian law schools have (at least) seriously reflected on increasing inclusion for Indigenous scholars and students and are taking some action, thus opening a debate about what, how and why some actions are useful, and other are not.[38] But in questions of inclusion for racialized people, persons with disabilities, and others who have been marginalized, deliberate steps are only beginning to make it onto the agenda.

In facing the challenge of building diversity, Canadian law schools are emphatically not a microcosm of other loci of power in Canadian society. A key example is women. The moment when women and men entered law school in equal numbers passed three decades ago in this country and is largely not even remarkable at present.[39] Similarly, the professoriate (with, of course, local variations) is looking more gender (binary)-balanced every year, with some law schools now having more women than men on faculty at every rank in the academic hierarchy.[40] There is much to be learned from this large-scale change within a period that is little more than a generation, but to draw just the slimmest lesson: in terms of the press

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36 The Carnegie Report, *supra* note 21 at 24, highlights how law schools transmit an unintended "hidden curriculum".

37 Useful examples include, Faisal Bhabha, "Towards a Pedagogy of Diversity in Legal Education" (2015) 52:1 Osgoode Hall LJ 59 [Bhabha]; Andreina Varela-Taylor, "Diversity: More than ticking boxes", *CBA National* (30 October 2020), online: <https://tinyurl.com/bdfjmk5d> [perma.cc/95DD-MTTB].

38 See "2023 Update on Canadian Law Schools Response to TRC Calls to Action" (10 February 2023), online (pdf): *Council of Canadian Law Deans* <https://tinyurl.com/5xwmcfby> [perma.cc/GZ5P-B3MM].

39 Brent Cotter, "Report on Canadian Common Law Admission Information and Statistics: 2012, 2013 and Historical Perspective 1985–2013" (April 2014) at 5–6, 11–13, online (pdf): *Council for Canadian Law Deans* <https://tinyurl.com/y9pyfvrz> [perma.cc/4SFB-Y8XK].

40 This marker was reached at UBC in July 2020.

for greater racial, ethnic, ability, and other identity diversity, sustained attention, modest policy changes, and simple metrics do contain much of the answer. Especially when the group one seeks to include has access to many forms of privilege. The nearly revolutionary change of bringing women into law schools has gone almost unremarked, and in the main, it has not altered pedagogy.

My prediction is that the diversity challenge law schools are just now turning to will require a more sustained attention to pedagogy to resolve. The biggest barrier to a deeper more radical inclusion in law schools will be including people who have not had social and economic advantages throughout their lives.[41] The confluence of Indigenous, Black, other persons of colour, and persons living with disability, with socio-economic disadvantage is a central fact here. For inclusion to cross the barrier of economic disadvantage, the agenda is deep and complex, and pedagogy will need to be part of the conversation.

A sliver of an example is presented by the recent rapid rise in the number of law students seeking various accommodations to complete their studies.[42] Accommodation is vital to increasing inclusion and is mandated by human rights law. It generally entails a change to ensure fairness for people with disabilities, short-term illness, or religious or cultural commitments. Many forms of diversity are simmering away under the accommodation label. And for the most part, law schools have yet to look beneath it. Rather, given the tremendous *diversity* of the reasons for accommodation, each request is addressed individually: a method which fits our personal understanding, and the law's understanding, of fairness. But it is no exaggeration to say that Canadian law schools deal with hundreds of accommodation requests every year, almost all related to assessment. This is becoming unmanageable. Sooner or later (sooner would be better), law schools will need to think hard about this. Especially because it is currently parked in a quiet administrative corner of every law

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41 For a thoughtful reflection on this issue, and the lack of data available, see Jamie Maclaren, "As Goes Access to Law School, So Goes Access to Justice—Part II", *Slaw: Canada's Online Legal Magazine* (18 July 2013), online: <https://tinyurl.com/z2cyd3xu> [perma.cc/Y4RD-MKRC] [Maclaren].

42 This trend is not limited to law schools and is seen widely across universities. See generally "Landscape of Accessibility and Accommodation in Post-Secondary Education for Students with Disabilities" (July 2018), online (pdf): *National Educational Association of Disabled Students* <https://tinyurl.com/5frt3pmk> [perma.cc/87C6-S5WB]. Roxanne Mykitiuk & Tess C Sheldon, "Confronting Accessibility in Clinical Legal Education: Human Rights Law and the Accommodation of Law Students with Disabilities in External Placements" (2020) 32 J L & Soc Pol'y 67. See also Matt Kristoffersen, "As Accommodation Requests Rise, Admins Make Changes" (6 March 2020), online (blog): *Yale Daily News* <https://tinyurl.com/3py3atjc> [perma.cc/DQ6H-C54B].

school, doing key diversity work without getting any attention. Examining what is happening here may be painful for Canadian law schools because it will reveal that the growing need for accommodations evinces biases in our pedagogy. In sum, a greater diversity of pedagogy would generate more diversity in forms of assessment and would, therefore, be likely to transform the 'accommodations' landscape. Furthermore, new diversity in understandings of academic success would allow for more diversity in admissions, providing some fresh perspectives in that area as well. This is not the only piece of the puzzle, but it is a missing piece because almost no one is yet paying it attention.

There is, however, one important change that has come to Canadian legal pedagogy in recent years: the embrace of experiential learning.[43] This is an area where law schools have made significant steps in a direction called for by the *Arthurs Report*.[44] This is an important shift and also a risk. It is important because it is a serious counter to the dominant pedagogy and a significant investment by law schools.[45] It offers students an opportunity for supervised, supported, and theoretically grounded active learning. Often, the lessons are longer lasting; for some students, this is the most effective learning setting. The instructor-to-student ratio is invariably much better than for any form of classroom delivery.

Some exposure to experiential learning is a vital component of a good legal education. But there are at least three risks. First, it is easy to confuse any opportunity to 'do real law' with experiential learning 'as a pedagogy.' Especially because much experiential learning occurs in legal clinics, because these are very expensive compared to classrooms, and because they contribute to addressing the access to justice crisis, there is enormous pressure to have students tackle people's legal problems—as many as possible—and be content to have the 'experiential learning' be 'anything they happen to pick up along the way.' Without support, clear learning objectives, and close supervision, this is not a pedagogy but simply a return to sink-or-swim that runs head-on into the second risk.[46] To wit: a too-swift embrace of experiential learning risks raising the argument that law schools are simply returning to an apprenticeship model of teaching

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43 See Smyth et al, *supra* note 19; Doug Ferguson, "Taking the Next Step with Experiential Learning", *Slaw: Canada's Online Legal Magazine* (10 March 2017), online: <https://tinyurl.com/5n88bj28> [perma.cc/M9QM-7W8X].

44 The Arthurs Report, *supra* note 3 at 51–52.

45 *Ibid*; Even in 1983, the Arthurs Report pointed out the very high cost of delivering quality experiential learning. The Carnegie Report, *supra* note 21 at 24, notes the trend towards experiential learning, labelling it a "weakly developed complementary pedagogy" in the American context.

46 Smyth et al, *supra* note 19; Patricia Barkaskas & Sarah Buhler, "Beyond Reconciliation: Decolonizing Clinical Legal Education" (2017) 26 J L & Soc Pol'y 1.

law, which undermines their entire enterprise. Down this track comes the argument that if all we are doing is putting people into legal clinics, shouldn't law school be shorter, or shouldn't the legal profession actually be teaching law? The defeat of this argument is the centrepiece in the long history of Canadian legal education, and running thoughtlessly into the embrace of experiential learning puts that history back on the table. The third risk is much smaller but nonetheless consequential. As experiential learning is a current vogue, there is an incentive for every institution and every instructor to attest to delivering on it. This would not be a problem if the pedagogy of experiential learning were well understood and defended, but in a discipline where pedagogy has been largely unexamined, such a goal is hard to achieve.

In sum, the contemporary substance of Canadian legal education works surprisingly well for how little attention has been paid to pedagogy over time. Canadian law schools benefit enormously from their status as a scarce resource, which ensures intense competition for student and faculty positions. The resulting elite students and elite scholars (usually) thrive. The curriculum is incessantly updated because the law continually evolves. There has been little change in categories, and pedagogy has been modified around the edges. The result of all of this is that Canadian law schools are not well prepared to address the deep challenge of welcoming Indigenous scholars, students, and legal traditions, and inclusion for those marginalized by race, by disability, and by socio-economic disadvantage is difficult to centre on the agenda. Learning law means learning about the power structures in our society and how those are protected and preserved. The further one's life experience is from those sources of power, the more the substance of legal education is inherently alienating. Law schools, and certainly some law professors, are beginning to integrate this into their teaching, but the extent to which the pedagogy itself builds the power of the law is unaddressed and thus forms a barrier to inclusion.[47] At this time, inclusion is in the ether, but Canadian law schools have not yet done the work of deeply examining how exclusion functions and, thus, how to work against it.

The *Arthurs Report* only glanced at questions of inclusion and pedagogy. But those glances were certainly accurate.[48] In addition to both wishing for, and cautioning about, experiential learning, the Report's clearest pedagogical call was for a much deeper engagement with legal

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47 See Mills, *supra* note 34; Bhabha, *supra* note 37.

48 The Arthurs Report, *supra* note 3 at 27–28. The Report noted that "the general question of access to legal education is a sociologically complex one, and unquestionably important in terms of social justice. After some deliberation, however, we decided that it did not fall squarely within our mandate …"

research and writing as core curricular commitments. The basic law degree curriculum has made almost no progress in this area. I started law school just a few years after the *Arthurs Report*, and at my law school the amount of compulsory instruction and assessment in legal research and writing during the basic law degree has not changed since that time. This is a great disservice to our students, especially those who do not arrive at law school as excellent writers. This is another fact that law schools can largely get away with ignoring because of the incredible strength of our students. This weakness has been persistently hard to address because while debates about curriculum are commonplace in Canadian law schools, they focus almost exclusively on the labels of courses. Questions about pedagogy, to repeat, are scarcely examined, and thus it is hard for quality learning of research and writing to rise to the top of the agenda.[49]

In considering how what happens at law school contributes to the relationship between legal education and the legal profession, the stagnancy of legal pedagogy is important precisely in the way Roderick Macdonald remarked in the same keynote address cited earlier: it is not possible to blame the law societies for the contours of legal pedagogy, however convenient that may seem. Even if law school accreditation does require particular subjects to be taught, there are no accreditation requirements about *how* that teaching happens.[50] This was true in 1983 and 2003, and even now with the advent of a national standard for law degrees promulgated by the Federation of Law Societies.[51] Furthermore, even in the current debate about 'competency-based' (in contradistinction to 'credential-based') admission to practice standards, there is (ironically) scant attention to pedagogy. Alas, there is no sign of what Macdonald labelled a 'crossroads'—an important choice to be made—in the terrain of legal pedagogy in Canada.

Having set the stage by considering pressures on Canadian legal education arising from the university context and the legal profession in turn, I am once again reminded of how skillfully the *Arthurs Report* constructed its analysis. Arthurs and his colleagues built an argument that the basic parameters of legal education constrained and shaped legal

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49 Rochette found that Canadian literature on legal education was sparse in comparison with that in the UK and Australia, and that in Canada the debate about whether academic or profession aspirations ought to prevail dominated the literature (*supra* note 7 at 37). See also Donald H Clark, "Core vs Elective Courses: Law School Experience Outside Quebec" in Roy J Matas & Deborah J McCawley, eds, *Legal Education in Canada: Reports and Background Ppaers on a National Conference on Legal Education*, (Montreal: Federation of Law Societies of Canada, 1987) at 214, 218 [Clark].

50 Macdonald, *supra* note 6 at 28.

51 "National Requirement" (1 January 2018), online (pdf): *Federation of Law Societies* <https://tinyurl.com/42jjmfmk> [perma.cc/Z3WV-ELMC] [National Requirement].

research more powerfully than any other factor. To this end, about half the pages in the *Report* do not discuss legal research—its ostensible focus—but rather talk about the basic law degree and its teaching model. I seek to emulate this approach to make the same point: the under-examined contours of Canadian legal education go a very long way in determining whether and how Canadian law schools are able to respond to the pressures they are currently facing. It is vital to unearth these contours to see the terrain fully.

4. Law schools at university

The mid-twentieth century shift in Ontario that fully and firmly brought English Canadian law schools into universities is a celebratory moment in the history of legal education history in Canada.[52] It is important to qualify this statement by recalling that elsewhere in Canada, law schools had been university faculties for much longer, but it is fair to say that Ontario was an important laggard, and the difficulty of the move from profession-controlled to university-controlled legal education shaped a debate which is still simmering across the country. University-based law schools were the norm in the United Kingdom and continental Europe for centuries, and the university linkage is a much older tradition in the United States and the antipodes. Thus, in this history as well, the Canadian story is distinct.

The principal advantage of law school within the university comes from the alignment with the core value of a university as the main social institution devoted to the pursuit and advancement of knowledge. Legal scholarship flourishes under these conditions, is enriched and enriches interdisciplinary inquiry, and contributes to a deeper understanding of the law, the rule of law, and the way law functions in societies. This relationship with research and with the university setting was the focus of the *Arthurs Report*, and in matters of research, many goals the *Report* set out have been achieved.[53]

The production of knowledge in law schools provides an important reservoir of research that forms the basis of law reform efforts worldwide, that contributes significant insights into critical issues within the legal system, and that can serve to improve legal practice. As with the vast majority of university research, the 'applied value' of legal research is an offshoot—sometimes very deliberate and sometimes utterly incidental—

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52 Pue, *supra* note 17.

53 These goals include transforming how law professors approach and prioritize research, developing new doctoral studies programs, and valuing these doctoral programs equally to those abroad.

of the unfettered pursuit of knowledge that is at the foundation of what a university is. It is easy to overlook this in a so-called professional school. And it is partially for that reason that it is appropriate to resist thinking of a law school as solely a professional school. Scholarly legal research is not only about improving the laws of a given moment any more than legal education is solely about memorizing the current statute books.

One of the persistent dilemmas of legal education is that no contemporary law school aspires solely to equip its students for the practice of law. If that were the case, the move of law schools into universities would not have made sense. Legal education does and should do more than prepare students for practice. It also does less—in the sense that a three-year program could not fully prepare students for the vast variations in the profession, even if more time were spent on courses about preparing pleadings, managing deadlines, and practice finance. Furthermore, it is as true now as it was when the *Arthurs Report* lamented it, that law schools are not well-focused on their professional education remit despite providing a set of skills of enduring value for practitioners.[54] The *Arthurs Report* made much of the fact that law schools of the early 1980s devoted most of their resources to courses aimed at the practice of law, without being well aligned with the needs of the profession.[55] This awkward mismatch has not changed.

The 'more' that law schools deliver comes in the two domains that define universities: research and teaching. I have discussed research above. On the teaching side, legal education provides excellent training in the core of its method: reading and analysis. These skills travel widely. It is also a valuable substantive education concerning governance, power, rights, and sometimes philosophy. For those who spend most of their lives in legal practice, law school provides a bedrock of learning about how all the pieces of particular areas of the law are interrelated, to which lawyers return repeatedly in the service of clients and legal creativity. One of the key distinctions between legal education in Canada and elsewhere is that law graduates rarely take their legal education into any of the myriad other careers for which it provides a strong foundation. In the Canadian context, this is another consequence of the relatively small number of law graduates per capita—there is little need for law graduates to look for employment beyond the profession.[56]

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54 The Arthurs Report, *supra* note 3 at 47–54.

55 The Arthurs Report, *supra* note 3 at 54–55.

56 Upwards of 90% of the graduates of Canadian law schools enter the legal profession at least initially (for examples see "Career Outcomes: JD Student Annual Employment Statistics", online: *University of British Coloumbia* <https://tinyurl.com/e4cstyc2> [perma.cc/W7UV-UPYU]; "Career Statistics: 2017–2022 Recent Graduate Articling and other Employment Data", online: *University of Toronto* <https://tinyurl.

The undeniable values alignment of law schools and universities is now complemented by a great number of practical benefits of situating law schools within universities. At the top of this list is money. Generalized governmental support of universities makes it possible for law schools in their current form in Canada to survive financially. For most Canadian law schools, the tuition that they charge does not come close to covering their operating costs. And for most law schools, their proportionate share on a per-student basis of provincial operating funds is also well shy of a robust budget. Most Canadian law schools are supported above and beyond these two key funding sources by universities deciding to devote additional resources to these schools to ensure their continuance.

This situation points directly to a significant challenge for law schools at present. Law school budgeting is widely disparate across the country, with a huge variation in flow-on effects. Tuition rates vary enormously (ranging from approximately $5,000 per year to approximately $35,000 per year[57]) without a concomitant (i.e. seven-fold) variation in quality. This disparity generates problems all along the continuum including: torquing the market for continuing legal education; generating incoherent student-financial aid challenges; ensuring incessant intra-university debate about how to fund the law school; stifling pedagogical innovation (especially of the most expensive pedagogy-experiential learning). Importantly, strong law schools benefit from a strong legal education system; that is, Canadian law schools are better when Canadian legal education is strong across the board. The uneven revenue status quo is sustainable only as long as universities are willing to support the financial positions of law schools from elsewhere within their budgets. This is a precarious position, given that provincial governments are supplying ever smaller shares of the operating budgets of public universities, and universities face financial pressures on every front[58]. At a most basic level, the solution here is either more tuition or more students. More students would violate the tacit

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com/mct3xp3d> [perma.cc/7XUD-9YPU]; "Employment Outcomes", online: *Thompson Rivers University* <https://tinyurl.com/4a2nfmec>; "Where do Western Law Graduates Work", online: *Western Law* <https://tinyurl.com/ycyrfkpm>. See for comparison with the UK Trends, *supra* note 9; regarding the US see Stephanie Francis Ward, "For 2022 law grads, bar-pass-required jobs increase while JD advantage positions decrease", *ABA Journal—Daily News* (25 April 2023), online: <https://tinyurl.com/bd73snfd> [perma.cc/7P4K-Y9XT].

57 These ends of the spectrum are McGill and the University of Toronto respectively. See "Tuition Fees, Scholarships and Financial Support", online: *McGill* <https://tinyurl.com/2k5ca9tf> and "JD Program Fees", online: *University of Toronto* <https://tinyurl.com/439w5t6c> [perma.cc/QB9G-SB4P].

58 See Statistics Canada, University revenues by source, as a percentage of total revenue, Table No 37-10-01-0110-01 (Ottawa: Statistics Canada, 2022) <https://tinyurl.com/r2kxsren> [perma.cc/7GGP-THVQ].

agreement with the profession. More tuition is largely impossible under the various regulatory frameworks established by provincial governments. One aspect of a solution may certainly be philanthropy—but raising money for core operating funds is a difficult proposition. Besides, the sums are so vast that philanthropy alone cannot be expected to fill the ever-increasing gap in the budget of just about every law school budget in Canada. At some point, it will be reasonable for provincial governments to become part of the solution—either with increased financing or increased tuition room. But the conditions for such support are always going to be politically complex. This is an element of ongoing stress that comes to law schools because they are (a tiny) part of the broad landscape of university financing in Canada.

A worthy side note at this juncture is that limited law school budgets contribute directly to limited financial assistance for students[59]. When law schools cannot make basic budget ends meet, the resources available for supporting students in need are limited. But law student debt is a significant issue, in particular as law schools seek to include more students who do not come from middle- or upper-class families with both a capacity and a tolerance for debt; finding better ways to support students is an increasingly crucial matter that dovetails with the need to stabilize law school budgets. Higher tuition for those who can afford it and forgivable loans for those who choose to enter underserved and, therefore, under-paid parts of the legal profession are both good ways forward. In each case, these possibilities are supported (or not) by factors that arise in particular universities, and in the sector as a whole.

Not far from the question of law school budgets is the growing shift to consumerist culture in universities. Consumerist culture is a vast challenge to universities that clashes head-on with the idea of knowledge for its own sake and the concomitant impossibility of quantifying the social value of an educated population (which in turn brings charges of elitism to universities). The late twentieth-century expansion of access to university education across Western liberal democracies has fueled these concerns in several ways.[60] But the tune plays somewhat differently in law schools, where the qualification one earns is an entry to an often lucrative and prestigious profession. In other words, law school is a good bet for

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[59] See Maclaren, *supra* note 41, pointing out that the University of Toronto, with the highest tuition in the country, also has the most extensive student financial aid program.

[60] Some examples include Stefan Collini, *Speaking of Universities* (London: Verso, 2017); John M. Ellis, *The Breakdown of Higher Education: How It Happened, The Damage it Does, and What Can be Done* (New York: Encounter Books, 2020); Peter MacKinnon, *University Leadership and Public Policy in the Twenty-First Century: A President's Perspective* (Toronto: University of Toronto Press, 2014).

prospective students intent on return on investment.[61] Still, consumerist values seep into law schools in myriad ways, that make it harder to deliver on curricular commitments to values that are difficult to monetize, like Indigenization and diversity. Even the cause of improving access to justice struggles against consumerist culture, a point I will come to below. One result of the influence of consumerism is pressure to make non-consumer values education part of the compulsory curriculum because these are the types of courses that are undersubscribed as electives. Making such courses compulsory provokes critiques ranging from 'law schools are out of touch with the profession' (which may be the point of making these topics compulsory) to 'law schools are ideologically narrow'[62]. The *Arthurs Report* foreshadowed this dilemma, which described law school curriculum as eclectic, and observed forty years ago that courses less directly tied to the profession were chronically undersubscribed.[63] A consumerist ideology also may shape options that law students seek upon graduation, especially those who have taken on considerable debt to obtain their legal education.[64]

Despite all these factors, consumerist culture has a more subtle influence on law schools than on some other parts of the university because of the law school's relationship to a prosperous profession. What this means, however, is that the eroding effects of this culture are insidious more than obvious and require a matching subtlety in the attention paid to them. The greatest risk of this culture shift is that it pulls law schools away from those core values of the university that have made such a

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61 Incurring debt as part of an investment calculus is a more significant barrier for those from lower socio-economic circumstances where consumer-debt is less commonplace because it is less accessible. See further, Catherine Dauvergne & Jeremy Schmidt, "Funding Legal Education: Responding to a Changing Landscape" (2018) 76 The Advocate 231 [Dauvergne & Schmidt].

62 See Natasha Bakht et al, "Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education" (2007) 45:4 Osgoode Hall LJ 667; Clark, *supra* note 49.

63 The Arthurs Report, *supra* note 3 at 55.

64 The extent of this concern is hard to specify. There is no large Canadian study of this question, but see Alan Morantz, "How Student Debt Skews Career Choices" (8 September 2021), online (blog): *Smith Business Insight* <https://tinyurl.com/yc538fu9> [perma.cc/A95H-UA9C]; H G Watson, "The Debt Burden", *Canadian Lawyer* (7 Aug 2018), online: <https://tinyurl.com/3s9apztx> [perma.cc/9BXM-UULD]; and Dauvergne & Schmidt, *supra* note 61, each of which look at small studies, all of which show some influence of debt on career choice. There is significant work done on this question in the United States, a very different economic context, see: Lewis Kornhauser & Richard Revesz, "Legal Education and Entry into the Legal Profession: The Role of Race, Gender, and Educational Debt" (1995) 70:2 NYUL Rev 829; Steven Boutcher et al, "A Faustian bargain? Rethinking the Role of Debt in Law Students' Career Choices" (2023) 20:1 J Empirical Leg Stud 166.

defining difference to the Canadian legal academy. Every contemporary shift, most prominently the shift towards experiential learning, should be evaluated and shaped in reflection of this risk. It is vital, thus, that experiential learning be widely understood as a new direction supported by an understanding of deep learning, and a clear account of how it reinforces what is done in the classroom. Consumerism is a concern facing universities overall at present, and it is felt most acutely in the humanity and social science disciplines among which legal scholarship is generally included as a research domain. The fact that it is straightforward to demonstrate that legal education is 'worth the investment' does not mean that this ought to become anyone's opening argument in seeking to counter consumerist rhetoric.

The pressing matter of mental health concerns among students is similarly shared across universities, with specific contours in the law school setting.[65] That mental health concerns are a top-of-mind concern across campuses ought not to surprise anyone: student communities are comprised of young people leaving home for the first time, taking on a new kind of stress in the form of university learning, and are (mostly) in the age range when many serious mental illnesses are first diagnosed. It's a dangerous cocktail. Furthermore, consumerist culture adds to the problem by instantiating the view that university education has no inherent value; rather, its value is something that will be proven later in the market. In law school, the pressures to succeed are heightened, and most admissions processes ensure that admitted students are even more attentive to success than university students generally. Furthermore, evidence shows that legal pedagogy and especially law school assessment traditions, contribute directly to mental health decline.[66]

For law schools, the question of mental health is both a serious puzzle and a matter of professional training. Law school is hard. And there is no great appetite to change this fact. While the old *Paper Chase* days of 'look to your left, look to your right … one of you won't be here next year' are long gone, learning the patterns and methods of legal reasoning is challenging work (especially with a clandestine pedagogy). The high

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65 There is a growing literature on mental health in law schools, examples include: Sue Shapcott, Sarah Davis & Lane Hanson, "The Jury is In: Law Schools Foster Students' Fixed Mindsets" (2018) 42:1 Law & Psychol Rev 1; Kathryne M Young, "Understanding the Social and Cognitive Processes in Law School That Create Unhealthy Lawyers" (2021) 89:6 Fordham L Rev 2575 [Young]; Michael Appleby & Judy Bourke, "Promoting Law Student Mental Health Literacy and Wellbeing: A Case Study from the College of Law, Australia" (2014) 20:1 Intl J Clinical Leg Education 461; Edward Béchard-Torres, "Feeling Inadequate: Reframing the Mindsets of Legal Education to Promote Mental Health" (2021) 44:2 Manitoba LJ 66 [Béchard-Torres].

66 See Young, *supra* note 65; Béchard-Torres, *supra* note 65.

standards of law schools are a breeding ground for anxieties, and the reality that every entrant is used to being at the top of their class and the indelible fact that for most that will not continue is stressful. A tongue-in-cheek solution to this dilemma would be to admit students who are highly capable (the LSAT could measure this) but who have middling grades (evincing a tolerance for lower levels of achievement and an ability to manage their own expectations). This might go a long way toward addressing the pressure cooker that is law school. But it amounts to a Swiftian proposal. The reality is that law schools expect a great deal from their students, and students expect it from themselves. These two things are unlikely to change, and a great number of wonderful things about law school are generated by these facts (camaraderie, life-long friendships, collegiality in relationships that carries on throughout professional life, high capacities, strong ethics, the list could continue). This is the puzzle of mental health in law school: it could be less stressful, but there is little desire for such an outcome; it could be less competitive, but to achieve this goal, a different group of people would need to be admitted.

What is required instead is that law schools tackle more directly the matter of teaching students to manage the pressures of studying law as part of training for managing the pressures of working in the legal profession. [67] This requires being transparent about those pressures and taking some responsibility for ensuring they are reasonable. It requires teaching students not only to do the work we ask of them, but also to take care of themselves while doing so, and to helping them learn what that means. And finally, it requires understanding that law students are university students, and they are at a time in their lives when we ought to expect mental health challenges to emerge. Universities and law schools increasingly understand the mental health landscape they operate in. This does not mean that mental health challenges on campuses will diminish, quite the contrary. More openness about mental health matters means they are likely to be more visible.

The professional training aspect of managing one's health, including mental health, is a significant goal. The legal profession has an atrocious record when it comes to mental health, and preparing young lawyers to understand mental health risks is an important contribution to improving this record.[68] But on this front, as on many others, education alone will not change the profession.

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67 See Brooks, *supra* note 27 as one example.

68 For recent Canadian data see Nathalie Cadieux et al, "Towards a Healthy and Sustainable Practice of Law in Canada: Phase 1 2020–2022 Research Report" (2022), online: <https://tinyurl.com/yz28npzy>.

Finally, equipping students to understand how and why law school is stressful and to manage that stress is difficult to achieve without being able to offer a better, more transparent account of our pedagogy. Expecting people to learn something difficult, and to work very hard at the process, without being able to offer a clear account of how one expects that learning to occur is a tall order. The eclectic curriculum exacerbates the lack of clarity about what law schools are trying to achieve pedagogically, where varying goals are sprinkled through the curriculum, but not clearly articulated for students.[69] Many law students arrive at law school with such strong personal resources that they do not need additional support. Many professors are compassionate and intuitive and provide support along the way. But this is necessarily *ad hoc* and almost certainly not based on any training in mental health. Furthermore, law schools are not yet doing this work on a *systematic* basis.

Situating law schools in their university context helps bring the contemporary situation into better focus. Here we can see the financial picture for both law schools and their students; the way the pursuit of knowledge is framed within law schools; risks posed by a consumer culture on campuses, and linked to that the challenge of the rise in attention to mental health. Every one of these factors reinforces the idea that a deep divide about an appropriate approach to financing legal education is very close to the surface in the Canadian academy. The complexity of contemporary universities provides some of the puzzle pieces required to construct an analysis of potential crossroads facing Canadian law schools. They are not, however, the end of the story. Law schools are also part of the legal profession, and I next turn to the puzzle pieces emerging from that direction.

5. Law schools and the profession

The tacit agreement about linking the number of law school places to the perceived needs of the profession and the use of the articling requirement to instantiate this link ensures that the relationship between law schools and the profession is closer in Canada than anywhere else in the English-speaking common law world. The articling requirement gives rise to an ongoing conversation about the role of the profession in legal education. Since 2015, this conversation has intensified because the Federation of Law Societies has begun approving Canadian law degrees as meeting its National Requirement.[70] This is not a full-on 'accreditation' of Canadian

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69 The Arthurs Report, *supra* note 3 at 56–58.

70 National Requirement, *supra* note 51. The Federation of Law Societies acts with authority delegated to it by the various provincial law societies which are the statutory bodies with the power to self-govern the legal profession.

law schools in the model of the American Bar Association, but it has been an important change in the landscape of Canadian legal education, and no university would invest resources in an unapproved law degree, even though such a thing is possible. The introduction of the National Requirement upped the ante in the legal education—legal profession relationship considerably. It is still early to envision how the use of a National Requirement will play out over time; at the moment, it serves to connect law schools and the profession even more closely.

The imperative to improve how Canadian law and the Canadian legal system recognize and interact with Indigenous peoples and Indigenous laws is at the top of the list of shared priorities. Both law schools and law societies are taking a variety of steps in this area, but rarely are these steps taken in concert or even with a deep awareness of what the other party is doing. The case for improvement in coordination is so obvious that everyone involved can see it, but steps in this direction are still in the fledgling stage.[71] This is a vital moment for law schools to think about what they want this relationship to look like. The answer ought to be: better than at present. A first step for law schools must be graduating more Indigenous people and supporting them to ensure that their experience of legal education does not so disillusion them that they are no longer interested in the practice of law. A second step must be ensuring that law schools share with the profession what they have learned and are learning about how to do this (and mistakes they have made); this is a scholarly endeavour that speaks to both teaching and research mandates of law schools. Perhaps because both of these steps require sustained attention, resources, and continually renewing effort, the third step—working with the legal profession on shared priorities—is still a distant marker on the horizon.

Closely linked to the need to improve all aspects of its work with and for Indigenous peoples, the Canadian legal profession is facing a crisis of access to justice that has reached endemic proportions. The inability of lower and middle-class Canadians to have reasonable access to legal services was already a matter of concern in the 1990s. In the past three decades, nothing has happened to alter this trend. There has been extensive study of the problem, and some changes have taken place on a province-

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[71] A stark example is the move in 2020 of the largest law school in the province and the provincial law society to introduce mandated cultural competency education. At present, law graduates who have completed a 40-hour, in-person course addressing the TRC Calls to Action, and a 24-hour course on Aboriginal and Treaty Rights, will also need to complete a 6-hour online program on the same topics required by the Law Society.

by-province basis, but there is no solution to the access to justice crisis on the horizon anywhere in Canada [72].

So, what does this have to do with legal education? The answer is much less evident than in the case of an imperative to decolonize. There is an educational aspect to this, which law schools are addressing head-on: making a case for a transformation of the legal system involves understanding why access to courts, and legal services more broadly, is important to a robust democracy. Law schools do a great job of ensuring that their graduates understand the value of legal access. They also do a very good job (which gets easier with each passing year) of impressing upon their students that the legal system has reached a crisis point. But an improved understanding of an access to justice crisis lacks any transformative power to address it. It is almost impossible for a group of new law graduates, each seeking an articling position, to create the kind of system overthrow that a 'solution' to the access to justice crisis needs. This is certainly not for lack of willingness or interest. A strong motivation to bring justice, or at least legal services, to ever wider groups of people is something that unites the majority of students entering law schools each year. If this were the only ingredient for change, a revolution would have occurred by now.

The crisis of access to justice has reached such proportions that what is required is a widescale economic restructuring of the profession. The need is so great that it cannot be solved by doubling or trebling the government dollars invested in legal aid systems because even 'x' amount of money would never be enough. Further, the legal profession has great disparity in earnings—some lawyers are very well off indeed, but those working in social justice are often earning comparatively little, even when paid positions do exist. Indeed, much social justice work does not pay anything at all. In the first instance, this means that articling in social justice areas (which is important to learning how to practice 'law for poor people'[73]) is almost impossible, and paying work, even at the earnings level of a good full-time barista, is scarce. Much legal work on behalf of people with few economic resources in contemporary Canadian society is a volunteer activity. Law

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[72] Two recent and widely circulated studies are Trevor Farrow et al, "Everyday Legal Problems and the Cost of Justice in Canada: Overview Report" (2016), online (pdf): *Canadian Forum on Civil Justice* <https://tinyurl.com/vv7j6dat> [perma.cc/ZYH4-DH55]; "Access of Civil & Family Justice: A Roadmap for Change" (October 2013), online (pdf): *Canadian Forum on Civil Justice* <https://tinyurl.com/y4nr5rfu> [perma.cc/XP3Q-EYWF].

[73] See Stephen Wexler, "Practicing Law for Poor People" (1970) 79 Yale LJ 1049, as well as Hutchinson's reflection on this piece at 50 years: Allan Hutchinson, "Practising Law for Rich and Poor People: Towards a More Progressive Approach" (2020) 23:1 Leg Ethics 3.

schools also do a great job of inculcating the value of volunteering, but this is hardly a solution, and it relies entirely on lawyers earning a living elsewhere and taking up unpaid work in their ample free time. The type of changes that are needed to completely address access to justice issues are immense.[74] The strongest contributions that law schools can make to the revolution required are through research rather than in fulfilling our teaching mission. (Although it may perhaps be useful to use classrooms to foment revolt, I never thought as a dean that this is what people were asking me to do when they asked me to ensure the law school 'worked on access to justice'). Mapping distinct ways forward that are not simply cries for more money is a vital research task. Law schools have already proven that highly motivated new graduates are not well-positioned to overthrow the system, although they sometimes make inroads. It is also the case, discussed above, that the rise in experiential learning offers legal services to those who otherwise could not afford them. Any increase in access is good, but more law-student-run clinics will not solve the access to justice crisis.

In a variety of ways not linked to access to justice, the legal profession is evolving quite rapidly. One of the most interesting contemporary challenges to the legal profession is the rapid rise of technologies that have the capacity to transform aspects of legal practice. Innovation in legal technology has two important implications for law schools. The first is that the rise of legal technology means that it is vitally important for law schools to articulate what is unique and irreplaceable about legal reasoning and analysis. As machine learning is increasingly sophisticated, clear guidance about deploying it in the legal profession is imperative. Law schools are well positioned to work on this question and, situated within universities can build interdisciplinary networks that will enrich these analyses. We should also teach law students to think through the components of legal reasoning and analysis that should not to be transferred to machines and articulate why this is so. Once again, more clarity about our pedagogy would help law schools move down this path because it would generate a clear understanding of what is unique within legal analysis.

A second important implication of new legal technologies is that there is less of the kind of work that junior lawyers formerly performed in big firms. This fact transforms how work is structured within law firms in predictable and unpredictable ways. Some new technologies, like e-discovery, are democratizing forces. Other technologies, like online contract drafting services, are pushing lawyers to 'unbundle' their

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74 An excellent and wide-ranging starting point is Trevor Farrow & Lesley Jacobs, eds, *The Justice Crisis: The Cost and Value of Accessing Law,* (Vancouver: UBC Press, 2020).

relationships with clients. Still others are vastly increasing the amount information with which lawyers and courts need to grapple. Pressures on the legal profession translate into pressures on articling positions. This is especially true when the rote work that articling students have long been assigned can now be done and done better by a machine.

Finally, it is of course true that innovations in legal technology can contribute to making justice more accessible. This was a principal lesson of the COVID-19 pandemic, which led to a giant and fast-paced technological change experiment in legal services. Both high-tech innovations (like the tax case predictive software of Blue J Legal) and low-tech ones (like allowing more matters to be dealt with over the phone or by video link) can contribute to increasing access. British Columbia's online Civil Resolution Tribunal is an excellent example of a very significant change that uses familiar technology to make dispute resolution more easily accessible, and it predates the pandemic by several years. [75] What is possibly most instructive from the point of view of legal education is the thoughtful way that the CRT has drawn on what is technologically possible in the delivery of legal services. The Tribunal has been mindful of which technologies are easily available to its clients and which key features of dispute resolution would be lost if human reasoning were taken out of the equation entirely. This is a terrain where law schools can and should focus their energies: ensuring that all new lawyers are equipped with a capacity to evaluate emerging technologies to see what they can best offer for both traditional legal practice and areas where legal services are scarce.

There are a number of areas where top-of-mind concerns for the profession dovetail with key issues for law schools and universities. Mental health and the cost of legal education are two that are especially important at present.

In the case of addressing mental health, the past few years have seen considerable communication between law schools and law societies, which have culminated in changes in at least one jurisdiction to the requirement that candidates for admission to practice need to disclose any history of mental health treatment.[76] In working to figure out better ways forward, the interests of law schools and the profession are aligned. Given this, there is reason to hope for (and some evidence of) complementary approaches.

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[75] The CRT began its work in 2016, see Civil Resolution Tribunal <www.civilresolutionbc.ca/> [perma.cc/GA5C-UPRD]. In 2021–2022, the CRT closed 5,163 disputes, and in 2020–21 it closed 5,227 disputes.

[76] See for example, "Implementation of Mental Health Task Force recommendations report" (24 June 2022), online: *Law Society of British Columbia* <https://tinyurl.com/mtjnbsvt> [perma.cc/7NGQ-8ZLU].

The conversation about the cost of legal education is only beginning in the profession, but I have put it on this list because, like mental health concerns, the case for alignment between law schools and the profession can easily be made. Increasing costs of legal education affect both how and who can enter the profession. Because law firms and law societies care about who enters the profession, the cost of legal education matters to them. Further, given that law schools are increasingly relying on other parts of the university for support and that tuition at many schools will likely increase as soon as it becomes politically feasible, the need for the profession to understand education costs is more important than ever. Law schools are beginning this conversation with law societies, and all efforts to continue it should be supported. Because the legal profession cares about Indigenization, diversity, mental health, and access to justice, the degree of indebtedness with which new lawyers arrive at their doorsteps matters also because all of these concerns overlap. The cost of legal education needs to be understood from a variety of vantage points. Values alignment for all students who arrive at law school intent on pursuing social justice is also important, as is the prospect of a middle-class life with some version of work-life balance. These very significant challenges are heightened for the profession as the costs of legal education increase, and they are much more complicated to address than a consumerist cost-benefit analysis would suggest.

The challenges that the legal profession presents to Canadian legal education at the moment are significant, even before the most recent addition to the list, which is the suggestion that the tacit agreement that defines so much about Canadian legal education may be fraying. The Law Society of British Columbia is supporting a report that recommends moving to competency-based standards rather than a credential-based standard (the requirement of a Canadian law degree or its equivalent) as a component of the requirements for admission to practice. This shift need not be a threat to law schools but is, of course, *prima facie* threatening. Law schools should be in a position to lead the conversation about competencies, and to embed required competencies in their degrees. Indeed, to demonstrate how, in many areas, this is already the case. But the unexamined pedagogy creates a significant barrier to this leadership. Moving in this direction might be called competency-based qualification via credential, that would mirror a shift medical schools in Canada began working towards decades ago.[77] Making this shift would require Canadian

[77] Jason Frank et al, "Competency-based medical education: theory to practice" (2010) 32:8 The Medical Teacher 638; "Competency by Design and Exams", online: *Royal College of Physicians and Surgeons of Canada* <https://tinyurl.com/d73s7ts5> [perma.cc/7HMV-8W2J]; "Position Paper: Implementing a Competency-Based Approach to Medical Education" (June 2016), online (pdf): *Resident Doctors of Canada* <https://tinyurl.com/msvvwawd> [perma.cc/W6VJ-N2CB].

law schools to address questions of pedagogy and to make changes about how students are assessed. These kinds of changes would be valuable for legal education in many ways, but there is immense discomfort about having this shift led by the legal profession. This conundrum reflects several ideas that the *Arthurs Report* pointed out: the fact that legal education aims at the profession but does not collaborate with it; the fact that there is too little emphasis on skills like research and writing; the eclectic character of the curriculum which obfuscates curricular goals. This debate is just beginning to take shape but also presents a crossroads.

In considering the pieces of the puzzle that arise in the relationship with the legal profession, one sorting mechanism is to consider which of these issues law schools can address and which they cannot. Law schools can do little to address the access to justice morass or the ways technology is transforming the profession, but they can prepare students for this terrain. They can produce curiosity-driven research to deepen understandings of these issues. Law schools can make larger contributions in improving and disseminating knowledge of Indigenous peoples' relationships to Canadian state law and about Indigenous legal systems, improving mental health knowledge, and fostering a more diverse graduating class. And in some areas, law schools will make changes that reverberate through the profession, as in the case of cost and student debt. These are changes that the profession has little influence over but will have potentially transformative effects on its membership. Similarly, the profession is capable of making changes that could have transformative effects on law schools. As long as the tacit agreement between law schools and the legal profession is central to the strength of both, finding ways for more open and meaningful collaboration is vital.

6. The Opportunity for a Crisis: Concluding and Learning Again from the *Arthurs Report*

There are so many crossroads facing Canadian law schools at the moment that it is hardly surprising that there is no consensus about focusing on one key decision point and proclaiming a crisis. Despite this, a crisis could potentially serve a number of purposes by motivating the kinds of changes about which it has been impossible to generate sustained attention. It is also clear, however, that at present, a huge number of issues present themselves—if the crossroad analogy is to be of service, we must envision a very complex intersection indeed. It is important to keep all of the complexity in the picture; otherwise, the risk of unintended consequences of any decision-making is enormous. In trying to puzzle through how to move forward successfully, the *Arthurs Report* offers some keen insights.

The *Arthurs Report* was not primarily about the state of Canadian legal education. Rather, it set out to investigate a crisis in the state of Canadian legal research. The Report was initiated by the Social Sciences and Humanities Research Council of Canada and supported by the [then] Committee of Canadian Law Deans and the Canadian Association of Law Teachers; both were interested in investigating changes in legal education in the preceding two decades.[78] The terms of reference foregrounded research, as did the report itself.[79] The consultative group chaired by Professor Arthurs was dominated by academics but included SSHRC representatives, judges, and practicing lawyers. The work was further supported by an advisory panel chaired by Canada's Chief Justice Bora Laskin. In approaching an analysis of a crisis in academic legal research, the Report made clear that understanding the history and the present of legal education in Canada was a necessary part of the analysis. Law schools being the site of concern, the overall business of law schools needed to be analyzed. The result of this approach is a Report that issued a clear analysis and prescription regarding legal research, which in the process amassed a deep analysis of legal education.

At a distance of forty years, we can look back and conclude that in matters of legal research there have been very significant changes. It would be revealing to repeat the empirical work of the *Arthurs Report*, but even proceeding on an anecdotal basis (and thus repeating one of the research sins of law professors that the Report identified) it is unchallengeable to conclude that many more Canadian law professors today are regularly publishing in peer-reviewed venues, are regularly winning SSHRC competitions, have a greater range of research skills and training, and are vastly more likely to hold advanced research degrees than was true in 1983. Furthermore, graduate research programs have flourished nationwide, financial support for graduate students has grown enormously, and many Canadian law schools have overcome their opposition to hiring candidates holding Canadian (rather than US or UK) doctoral degrees. Many of the research issues identified in the *Arthurs Report* have been resolved.[80]

For all of these reasons, with forty years of hindsight, I think it is right to conclude that the *Arthurs Report* achieved its central objectives. But the background story the Report told about legal education has scarcely shifted. From this state of affairs, there are three conclusions to be drawn: first, focusing on a crisis motivates change; second, keeping all

78 The Arthurs Report, *supra* note 3 at v (Chairman's Preface).

79 The Arthurs Report, *supra* note 3 at 165 (Appendix 1).

80 Unfortunately, one issue that has not been resolved is that because *only* the research objectives have been achieved, the atmosphere for researchers working in law schools is more stressful than it was in 1983; a requirement to perform as serious scholars has been grafted on to a professional school setting which by and large has not changed.

the complications in the picture is vital to ensuring change can actually happen; and third, we are still a long way from making the changes in legal *education* for which the *Arthurs Report* called. The importance of the *Arthurs Report* comes in part from its provenance—a deep engagement with academic leaders in collaboration with interdisciplinary colleagues and the legal profession. At the forty-year mark, we are long overdue to repeat this formula. None of the recent reports on legal education have come close to this formula and these goals.

What crisis could motivate a new initiative? There is any number to choose from. The first might be the financial position of law schools. Without a solution to the budget problem, law schools will endlessly focus on it: they have no other choice. When the budget does not balance in the first place, it is impossible to creatively adjust to address the pressing priorities of the current juncture in history: decolonizing, improving inclusion, addressing mental health, and declining articling placements. The strained budgets of law schools lead to even greater strains in financial aid for students. A second crisis candidate is a failure to articulate how and why law is taught in its current mode: a stagnant pedagogy. As we consider top-of-mind issues in law schools at the moment and how law schools fit into both universities and the profession, it becomes clearer and clearer that we continually bump up against the fact that law schools resist seriously grappling with pedagogy (and the concomitant question of assessment). To achieve serious progress in making law schools welcoming to Indigenous students and welcoming to students from outside the upper and middle classes, to students overcoming disabilities, to students with diverse learning styles, law schools, at the very least, need to explain to themselves what and how they are teaching through this mode. This is also essential to being able to lead a conversation about competencies. The failure of legal education to defend its *education* makes it vulnerable to calls to do things differently: to deliver degrees in a shorter time frame; to return to an apprenticeship model; to assess competencies. These are but two examples of how a new inquiry into the state of Canadian legal education could be launched.

In the absence of other events marking the fortieth anniversary of the *Arthurs Report*, taking its ambition, breadth, and collaborative approach as an inspiration and beginning a new mapping of the state of Canadian legal education would be a fine tribute.