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Reducing Enrollment in Law Schools

by *Jack R. London**

I. INTRODUCTION

THE TOPIC OF this discussion focuses on enrollment reductions from a law school perspective. The process described is that which the University of Manitoba engaged when deciding to voluntarily reduce its intake in 1981.

Tensions resulting from the interplay of factors such as the need to find a point of equilibrium between the quality of legal training and legal services on the one hand, and the access to legal training and legal service on the other, have historically been spurred by inadequate funding of law schools and have moreover been exacerbated by evidence of further retrenchment and shrinking resources.

Two years ago Manitoba began to seek a significant increase in resources and funding in order to allow it to continue to provide a quality education for the numbers of students then being enrolled. Not only did arguments on the need to increase enrollment fall on deaf ears, but the argument that the program required enrichment through increased funding was disregarded.

The law school accomplished the desired enrichment of its program by negotiating for, and receiving, a guarantee from our University that its resource base would be maintained notwithstanding an enrollment intake reduction in the order of one-third. The overall effect, once the program matured, therefore was to enrich expenditure per student by one-half. The decision to reduce was difficult, and even traumatic for the law school.

In the process of the debate which preceded that decision, the law school learned much about the way legal institutions are perceived in the community at large, by government and by universities, at least in Manitoba.

The school was also forced to develop collective perspectives on the advantages and disadvantages of enrollment maintenance or reduction and to clarify some of the factors to be considered in the decision-making process. Essentially, this paper will attempt to share one view of the factors which one ought to consider in deciding whether to maintain or reduce enrollment in a particular law faculty.

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II. FINANCIAL AND ECONOMIC CONSIDERATIONS

Certainly, it is important to consider the prevailing and foreseeable financial climate. It is unlikely that increased resources will be made available for the training of law students. Even in the short run, the law school will be fortunate to retain existing resource bases. The Federal Government's proposed reduction in Established Program Financing, constituting as it does one of the most serious threats faced by universities in recent years, simply worsens the situation.

Law faculties generally are perceived by universities to be profitable in the sense that, relative to other units, they are net contributors of resources to the university. Although faculties are viewed as possessing a certain stature and prestige, the fact is that law, legal institutions and lawyers, particularly the training of lawyers, are matters of considerable indifference in terms of priorities for funding by governments and universities. Without embarking on a long explanation of the basis for these statements, and acknowledging their impressionistic quality, the concern for quality training of lawyers, if the concern exists, does not translate into a willingness to properly fund that training. The per capita cost of training law students is not all that much more than the per capita cost of training an undergraduate student in a General Arts faculty. The differences are measured in hundreds, not thousands of dollars. Moreover, the cost of training a law student is much less than the cost of training students in virtually all other professional schools, particularly those professions which are technologically based, like Medicine and Dentistry. The high cost of technology there acknowledged, the fact is that law schools and legal services do not rank high in terms of community priority for allocation of scarce resources.

The situation therefore is that law schools are asked to train professional people, in numbers which experienced dramatic growth in the past decade, but for which purpose they are given inadequate resources with which to do a quality job. Lawyers may be successful lobbyists for our clients, but legal academics' lobbying efforts have been distinctly unproductive.

III. AIMS AND GOALS OF LAW SCHOOLS

The result, fueled by the continuing but misguided preoccupation of all law school faculties to consider themselves as "eclectic" institutions, servicing all needs of all people for all purposes, has been the large numbers of students in overly large classrooms, studying how to be professional lawyers without the assistance of curricula, methods, environments and technologies which would greatly assist in their proper and effective training. Though there are signs of change in sight, at least in terms of curriculum and teaching, they are as yet relatively unfashioned, sporadic and minimally effective.

One's perception of a law school can not simply be that it is a place where a student studies about law for some vague, unapplied and undefined reason. Rather it must be viewed as a place where one studies to be a lawyer, requiring profound investigation about doctrine, jurisprudence and policy. Though it is obvious that even the general study of law will benefit from lower student/faculty ratios, there is nothing inherent in its study that ought to lead one to distinguish it from general undergraduate studies, in which case, one ought to have virtually unlimited access to law schools along the same lines as that provided in the general undergraduate faculties. In fact, the development of extensive undergraduate course offerings in law ought to be encouraged.

Law schools as we know them in Canada do not recognize well enough that, with a number of institutional exceptions, they have essentially two missions, the training of lawyers and legal scientists being one, and legal research and scholarship the other, both of which ought to be given equal priority. To discharge these missions effectively, one must provide the type of training, including clinical training, which will properly instruct students as lawyers, and not necessarily as journalists, business people or politicians, while providing to faculty members the time and resources which are required to do consistent and profound research. High student numbers with low resource availability can be seen to subvert these goals.

If one concurs in these observations, there are two immediate questions raised which impact on enrollment levels in any faculty of law. The first is that a law school must assess whether it can, within realistic resource estimates, satisfactorily fulfill these twin missions. Overall the University of Manitoba has done an adequate job, but one that can not be described as satisfactory, particularly in the area of scholarship.

Secondly, if one accepts the view that a faculty of law is a training ground for lawyers, one is inevitably required, in determining appropriate intake, to take into account certain marketplace factors, including demand for graduates and the market for legal services. Manitoba has already done so to some extent. Therefore, it is incomprehensible that colleagues seek to deny the value of, and need for, marketplace data as one of the important criteria in determining appropriate enrollment levels, as though current enrollment levels have some independent natural justification. However, one must be very careful to look to long term needs and trends, not passing fancies.

IV. EFFECTS OF THE APPLICANT POOL AND JOB MARKET

Moreover, one must look carefully to whether the applicant pool at a particular law school is maintaining itself over time both in quantity and quality.

The experience at the University of Manitoba is, perhaps, instructive. The University agreed not to reduce the law school's funding,

though it would reduce its enrollment intake. While the University would not accede to the law school's demand for a greatly increased share of the pie, it was left with an undiminished share with which to enrich and further the education of its law students. At the same time, the school was aware that the quantity and quality of its applicant pool, particularly in the middle ranges, seemed to be slightly diminished from that which had prevailed in the early to mid-1970's and the faculty suspected that there might yet be further decline, possibly because of the prevalent rumors that the market for graduates was soft.

The law school was also greatly assisted, in its discussion with the University, by the enlightened perspective taken by the Law Society of Manitoba. On request by the University for its participation in this issue, the Law Society took two very important positions, perhaps open to it because there had never been an incident in Manitoba of a failure to place a student in articles and our very best estimates were that we never would experience that problem. First, the Society indicated that it did not feel it appropriate to intervene in the debate on enrollment or to promote either an expansion or reduction of the number of students admitted to the Faculty of Law, particularly since there was no hard evidence that numbers in the profession were a problem. On yet a further request for its opinion, the Society responded that it felt the University best qualified to make the judgment.

Secondly, the Law Society guaranteed that so long as the Faculty did not increase enrollment intake beyond the pre-cutback level of 130 full-time and 5 half-time students, every graduate of the Manitoba Faculty would have the opportunity to qualify at the Bar within the one-year period following graduation. In other words, the Law Society undertook the obligation of ensuring that persons who began law school in Manitoba would not be subjected to adverse market forces until, at least, they had been licensed to practice independently. This situation presents an absolutely crucial, ethical question which every faculty of law and governing body must face. It is improper, even with "scare" advertising for applicants, to admit students into the first year program at a faculty of law, the Law Society prescribing articling as a licensing requirement, without those students being assured that, if they so choose, they will at least be able to complete and to obtain a practising certificate. After licensing, market forces rightly can begin to play.

As a result, though there was an impression in some quarters that the Manitoba legal graduate market was soft, given the Law Society's guarantee, the law school was able to make its decision unimpeded by concerns about the placement of its students. It focused therefore on issues of quality of services and training.

Before going on to list specifically the negative and positive aspects of enrollment reduction, it is surprising to note that there is little credible information on the quality of law school training in Canada. Perhaps that is because the yardsticks of measurement are so difficult of definition

even if one is able to agree on the objectives to be measured.

Law Schools do an acceptable job of educating their students, though there is much room for improvement. Schizophrenia among schools as to the object of law school training, and, most importantly, as to the terribly inadequate historical funding patterns, have resulted in legal education which is less than what one would hope and expect. The most recent hard evidence supporting this conclusion comes from "The Survey of Employment Opportunities for Articling Students and Graduates of the Bar Admission Course in Ontario", a Report submitted to the Committee of Ontario Law Deans and the Law Society of Upper Canada in December 1980 by Marie T. Huxter, Assistant Dean of the Faculty of Law, University of Toronto, (the Huxter Report of December, 1980)

On the one hand, the Report concludes that there are increasing, though not yet dramatic, problems in obtaining articling positions and subsequent jobs. On the other hand, it offers a view from Ontario graduates of their relative rating of the quality of training received by them in each of the three component phases which constitute the training of a lawyer in Ontario, law school, articling, and the didactic portion of the Bar Admission Course. With 87% of those responding indicating their law school training in Ontario was at least fair, Ontario law faculties were rated slightly lower than the ratings given the articling experience (93% said fair or better) and slightly ahead of the Bar Admission Course (82% said fair or better). Overall, contentment reigns in all three sectors, though one also would like to have the views of more seasoned veterans as well as those responding.

It is noteworthy that Ontario law schools ranked behind both the articling experience and Bar Admission training in terms of the percentage of respondents who indicated that the training was either "good" or "excellent". The articling experience led the list with 76% of the respondents rating it either "good" or "excellent", a statistic which might serve to shatter the conventional hypothesis. A total of 56% of the respondents reported that their Bar Admission training was either "good" or "excellent". However, only 47%, less than half the respondents, were prepared to describe their law school experiences in Ontario as being either "good" or "excellent". Moreover, only 6% of the group were prepared to indicate that the experience at law school was in fact "excellent". Allowing for normal levels of student reaction and discontent, particularly amongst those who have been less successful in grade-getting, the statistic is worrisome (See Tables 54, 57 and 60 of the Report).

There is no reason to believe that a similar survey would not produce very similar results among law schools of Eastern Canada; the ratings of the Bar Admission program in most provinces other than Ontario and Manitoba excepted.

V. NEGATIVE ASPECTS OF ENROLLMENT REDUCTION

The focus now is to turn to a more detailed analysis of the positive and negative aspects of enrollment reduction from a law school perspective. Looking first to the negative aspects of enrollment reduction, a number of negative considerations exist as follows:

1. Enrollment reduction increases the number of otherwise qualified applicants to law school who are denied access to learning and careers of their choice. It needs very little additional comment or statistical analysis to observe confidently that no law school in Canada is able to meet the now existing demand for entrance of candidates, who, if not uniformly excellent, would very likely be able to complete the program successfully. Indeed, as earlier indicated, it is my view that the resolution of this debate on numbers ultimately requires a decision as to whether access to law school is worthier of greater emphasis than the increased quality of education for those admitted. This is particularly important in a province in which there is only one faculty of law, given the fact that some law schools give initial preference to provincial residents. Put another way, one must decide whether wider access to some legal services outweighs, in the balance, more restricted access to better quality legal services. Finding the point of equilibrium is the magic;
2. In the event that enrollment reduction implies or results in funding cutbacks for a faculty of law, already inadequately financed programs would be rendered yet less adequate, to the detriment of legal education and, in the result, to a lesser quality of legal scholarship and legal services offered to the consuming public. One therefore can understand the dilemma of law schools faced with per capita funding formulas and their need, in the result, to defend current enrollment positions.

It is worth a moment to pause on this point. Most law schools already function at minimal critical levels of human and other resources. They have very few non-salary expenses which can be reduced simply on account of reduced enrollment. The basic cost of maintaining the essential core program of personnel and services is relatively fixed and does not decline proportionately with a reduction in student numbers. This is particularly relevant in a federal state, like Canada, where provincial law schools have quite unique responsibilities to local and provincial systems. One would therefore expect from the governing bodies not only an informed understanding of the problem, but also strong support for the faculties concerned.

The University of Manitoba argued successfully that there ought not to be a cutback in funding consequent on a cutback in enrollment intake because, to a large extent, the overall population of the University would not be adversely affected. The kind of person who would come to law school generally, would simply find his or her way into another program at the University. The law school was fortunate in having that argument accepted, though that might not universally be the case in other environments;

3. Reducing the student population may result in fewer available course electives, because of reduced student selection and a lower than accept-

able critical mass to support general law school activities, namely, legal aid, law review, sports, committees, newspaper, etc.;

4. One must be careful to phase-in a reduction program over time so that people already in the pre-law stream who have been proceeding and making decisions on the assumption of a particular intake policy are not adversely impacted;

5. A law school ought not to be seen to be the "lackey" of the legal profession, else its credibility as an intellectual environment may be adversely affected. This is not simply a point of "discomfort" but a very real concern for program quality. Certainly, Manitoba Law School has felt uncomfortable with the allegation, coming out of Ontario, that it acted pursuant to "pressure" from the Law Society of Manitoba. It is obvious nothing could have been farther from the truth. If a law faculty is perceived, rightly or wrongly, as the servant of the profession, its credibility as an institution of independent thought and exploration can be diminished.

The attitude of some colleagues that they must be adversaries of the profession into which most of their graduates find their way is also incomprehensible. Much less understandable the reluctance of the Bar, in some provinces, to be supportive of its law school or schools. A cooperative model would be far more productive and helpful;

6. Reduction in entering numbers presumably would result in a reduction in competition after graduation. That, in turn, would lessen the likelihood of a cost structure for legal services which is affordable and reasonable, particularly to the low and middle-income client. In other words, a reduction in the supply of lawyers, in light of a demand for legal services which, at least can be expected to maintain itself and which more likely will increase, must result in higher costs for the delivery of legal services, which in turn reduces access to them. One must here take two factors into account. First, one must analyze whether provincial law schools are presently exporting graduates and whether provincial resources ought to finance such export. Secondly, one must determine whether or not it is reasonably likely that if demand for legal services increases, the province will be able to import graduates from other law schools in Canada, or elsewhere, to meet the demand. Since Canadian law degrees are portable in all provinces, local demand can be met where necessary by extra-provincial supply, so long as other schools continue current production levels;

7. Smaller graduating classes are likely to result in proportionate reductions in the flow of graduates to practice in non-urban areas and to types of legal practice which are less remunerative, though equally or more important. Urban and affluent law firms and clients will be likely to win the hiring competition induced by reduced numbers of graduates which in turn will continue or even exacerbate chronic regional under-servicing and under-servicing of clients in low to middle income groups. Unfortunately, given the difficulties of defining exactly what it is that lawyers do or should do and the absence or inadequacy of hard data on demand, it is difficult to do more than present these comments on an impressionistic basis. The Huxter Report, earlier mentioned, seems to indicate that there may be some softness in the marketplace for legal graduates. Nev-

ertheless, larger numbers, at least in Manitoba, are not necessarily flowing into the areas in which one might want or expect them. Moreover, though it is a topic in itself, one must here question whether the appropriate response to under-servicing is to maintain or increase the numbers of lawyers graduating, or whether resources ought to be diverted to other para-professional training programs which have lower training costs and, presumably, lower access costs for consumers:

8. Lastly, reducing access to law school will perpetuate, even worsen, the already elitist nature of the legal profession and the law student body, which, in turn, must result in further unwelcome distance between its members and the community it serves. The fact is that reduced intake could have a disproportionately negative impact on women, native students and some minority groups who are less likely to want to enter an even stiffer competitive model for admission than that which now exists. Since there are no yardsticks which would defend current levels from the elitist charge, the point is worthy of considerable reflection.

For these reasons, and others perhaps not here suggested, the thrust of the efforts of law schools and universities ought to be in the direction not of enrollment reductions, but enrollment increases. Larger graduating classes, in the best of all worlds in which resources are plentiful inevitably would counteract the perils just noted and indeed would have positive effects in further mitigating elitist tendencies, allowing greater access of qualified individuals to training, potentially reducing the cost of legal services, or at least reducing the amount of potential increases in the cost of legal services, and increasing the flow of lawyer services to non-urban and under-represented legal areas.

VI. POSITIVE ASPECTS OF ENROLLMENT REDUCTION

In the worst of all worlds, in which resources are scarce and in which the training of lawyers is a reduced priority, one must also look at the positive effects of reduction, assuming one is able to maintain resources and resource growth at pre-reduction levels. Some follow:

1. There are many who believe that the community already is over-lawyered and over-regulated. It is suggested that it would be generally beneficial if individuals in the community were less formalistic and legalistic in their relations; if self-help were more often resorted to; and, if dispute resolution techniques other than those invoking the formal legal system and lawyers, were adopted. The position is increasingly prevalent and would argue, perhaps, for lower levels of fully trained law graduates as we now know them;
2. With maintained resources and lower enrollment, one has the ability to have smaller, more intimate classes, and more individualized instruction, which obviously will result in very much increased standards and quality of learning and training;
3. Workshops, laboratories, simulations and clinical programs, generally more costly than didactic classroom training, become more realistic and more available in the result. Indeed, all students graduating from a law

school ought to have the opportunity, if not the requirement, to engage before graduation in significant clinical experiences in which he or she may reflect, in the fullest sense, on inter-personal skills and on the delivery of the legal service. Small group and individualized instruction are here absolutely essential. Moreover, the clinical training of lawyers will be designed and effected dissimilarly by the law schools and by the Bar. Production formulas and service imperatives can mitigate reflective educational goals and therefore, the quality of training offered by practitioners. Law schools, not so much constrained by marketplace forces, can establish pre-practice clinical experiences which in the long run will be different and more beneficial as early training exercises than those of the Bar.

4. Better and more frequent evaluation techniques can be employed. In particular, through periodic testing, individualized or small group instruction and increased individual writing exercises, the feedback given to students will not only increase in quantity but in quality. It is in this area, that some of the more notorious failures of the educational system have occurred.

5. Lower student/teacher ratios can translate if the school wishes them to, into increased time and energy for research and scholarship activities, so fundamental to our being something more than "trade schools" and truly deserving of a place in a university. Most often, one hears from one's colleagues that one of the reasons for the extremely low level of legal scholarship in Canadian law schools is the heavy demand made on faculty members by their teaching loads. Presumably, having fewer students would alleviate those demands somewhat, either because the number of required sections of a particular course can be reduced, thereby freeing up productive research time, or, because the nature of our program and instruction itself might be modified to integrate more fully scholarship activities. As a result, our graduate programs would receive a significant boost;

6. Fewer students will result in an increased ability to cooperate with the governing bodies in terms of the "fourth year of training", the articling period. Two beneficial results might be increased selectivity of those articling experiences approved as being acceptable training exercises and an improved Bar Admission program, with an increase in reflective skills training. These benefits, and the two or three next mentioned, will be seen as irrelevant by those who do not see law school training as an integral part of the training of lawyers who go on to practice. The vast majority of graduates, however, go into practice, either public or private, and the vast majority of those stay there. Hence, it appears that it is the obligation of all those involved in the undergraduate training of those lawyers, and indeed the continuing legal education, including specialty certification, of that group, to coordinate and integrate their efforts as much as possible so as to increase the effectiveness of the legal training process as a whole;

7. Reduced numbers would mitigate the alleged problem of the "dangling lawyer"; the lawyer who after articles is cut loose and must practice on his own whether or not he wants to, and whether or not he really is capable of independent practice. Many newly-called are, many are not.

One of the primary constituencies to which law schools, along with the governing bodies, owe an obligation, is the public which consumes legal services. If it is inadvisable for some people to be forced to hang out their own shingle too early, then all of us collectively must be involved in finding a solution;

8. Similarly, the quality of applicants to law school may be adversely affected if the capacity of the graduate lawyer to command an acceptable flow of interesting work, at fair remuneration, within a reasonable time, is not apparent. Once again, law schools owe a duty to those who enter law school and to the consuming public to attempt to find an equilibrium wherein access to both training and services is high, but so is quality. Certainly, the market-place following licensing should not be the major determinant, but, on the other hand, it is not necessarily wise to blindly bulge the system so that the best qualified and desirable applicants pass by law studies in favour of some other profession or vocational pursuit. This point has not yet been reached in Canada, but the situation must be closely monitored.

9. Lastly, it is said that the quality of a law school can best be measured by its student body. A smaller, more selective and more homogeneously excellent student body, both academically and experientially, constantly pressing and challenging each other and the faculty, inevitably will lead to a better educational experience, a more profound investigation, and, hence, a higher quality of graduate lawyer or legal scientist.

VII. CONCLUSION

Those are some of the positive effects of reduced intake. However, having articulated them, particularly those bearing on an increased quality of training, let me inject a note of caution. It is quite possible, and here the experience of the Faculty at Manitoba can not yet be evaluated, that reduced enrollment can simply lead to reduced access with no concurrent increase in the quality of the experience. Few of the positive benefits to which I have referred, but all of the disadvantages, will result if the Faculty as a whole, and each of its members individually, do not grasp the opportunity for improvement through curriculum changes, more innovative and ingenious teaching and evaluation mechanisms, clinical programming, and increased research and scholarship. It can simply make things easier for the staff, not better for the students or the community. Therefore, one must be extremely cautious and vigilant in searching out the point of equilibrium.

This discussion has proceeded on the assumption that law schools will continue to have a voluntary choice to make on levels of enrollment. Given foreseeable reductions in post-secondary financing and reduced applicant demand, I fear that that will not be the case. Therefore, Manitoba felt that the appropriate time to give consideration to enrollment reduction, and to a favourable negotiation of the terms thereof, was now, before economic necessity diminished further whatever leverage still remained.

If it turns out Manitoba was wrong, or when the community awakens

to the fact that graduating larger numbers of lawyers is desirable, the law school will certainly be prepared to reinstate, or increase further, its intake levels. It will do so only if its funding also is increased accordingly, so that quality can be maintained.