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Reconciling Professional Legal Education with the Evolving (Trial-less) Reality of Legal Practice

Julie Macfarlane and John Manwaring***

Professor Galanter's study of the trial as a discrete legal event shows that, in spite of the growth of all aspects of the legal system—more law, more lawyers, more judges, more court personnel and increased budgets—the absolute number of trials has declined significantly since 1962. The phenomenon of the "vanishing trial" is probably not limited to the U.S.; certainly Ontario litigators believe that they do far fewer trials now than 20 years ago. "It's considered exceptional now if we actually litigate something to a trial."[1] While case type remains a major variable, the proportion of civil cases that proceed to full trial in Ontario does seem to fall over the past 20 years. One study using a sample of approximately 600 cases a year shows that recourse to full or partial trials fell from 4.9 percent in 1973-74 to 3.2 percent in 1993-94[2]. Preliminary studies of trial rates in Ontario also suggest that the absolute number of trials in decline although more work needs to be done to confirm.[3] However, thwarting efforts at trial list reduction, there appears to be little overall impact on the accumulation of cases on trial lists since where trials do take place, they are often longer and more complex (using more expert witnesses, and taking up more courtroom time).

Interpreting the meaning of these figures is, as Professor Galanter and others have pointed out, somewhat more contentious. First, the reliability and comprehensiveness of Ontario court data on trials is questionable and data collection sometimes patchy. We are also wise to remind ourselves that the fact that a case does not go to trial does not necessarily mean that it has been settled—at least as many end by default judgment or where action is not joined, and others are simply not accounted for (lawyers do not always inform the courts when their cases end, and systematic tracking of incomplete court records is infrequent). What also appears significant in understanding the trend of declining trials is the increase in pre-trial and motion activity, also described by Gillian Hatfield and others in the

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1. Julie Macfarlane, *Culture Change? A Tale of Two Cities and Mandatory Court-Connected Mediation*, 2002 J. DISP. RESOL. 241 [hereinafter Macfarlane, *Culture Change*].

2. John Twohig, Carl Baar, Anna Meyers & Anne Marie Predko, *Empirical Analyses of Civil Cases Commenced and Cases Tried in Toronto 1973-94*, *in* 1 Ontario Law Reform Commission, *Rethinking Civil Justice: Research Studies for the Civil Justice Review*, at 77-181 (1996).

3. Herber M. Kritzer, *Disappearing Trials? A Comparative Perspective*, 1 J. EMPERICAL LEGAL STUD. 735 (2004).

U.S.[4] In Ontario, courtroom time attributed to motions and to pre-trials rose by 69 percent and 140 percent respectively between 1989-90 and 1993-94[5].

Our focus in this paper is the impact of these trends on legal education, especially professional legal education. What is undeniable is that lawyers (and judges) are more and more involved in legal tasks which are not related to trials. This does not necessarily mean that the practice of law is focused exclusively on settlement activities, although such activities are increasingly important. Pre-trial processes and procedures including motions, discovery and mandatory settlement conferences take up more time than ever before. Lawyers are playing a different role, offering different kinds of service to their clients, and performing different tasks.

There are many reasons given for this shift, including the rising costs and delays within the civil justice system. Even clients who win at trial complain. For example, clients say: "I won, but now I have to pay $12,000 to $15,000 in legal fees, so why did we go to trial?" So the outcome is not only the trial victory, but the practical effect of the trial outcome.[6]

Litigators are already recognizing this new reality and adjusting accordingly. The following comment from a litigator is typical:

> When I came out of law school all I wanted to do was trials. . . . [B]ut it became very clear to me within three or four years of practice that the people who were sitting across my desk from me weren't interested in trials . . . I love trials. So sure, I would love to do trials but, it's not about me, it's about my clients and in the end if you want to get ahead in the world you have to think about your clients.[7]

Lawyers do more planning, prevention and settlement work and in a more structured way than ever before, partly because of institutional requirements and partly as a result of client pressure to reduce the cost of legal services. While it may be a stretch to claim that the profession is undergoing a "transformation," there are growing signs of dissatisfaction with and challenges to the traditional model of the lawyer as a "manager of war"—the strategic and skillful facilitation of peace now appears to be at least equally important. Along with changes in dispute resolution processes, client expectations are also changing. In particular, repeat users of the civil justice system are no longer satisfied with a slow and ponderous progress towards trial and are starting to expect early efforts to explore settlement, using mediation or other consensual processes wherever possible.

As legal educators, the question that intrigues us is what the shift away from the trial means for the education of 21st century lawyers. Like many professional regulators in Europe and North America, the Law Society of Upper Canada

4. *See* Gillian K. Hadfield, *Where Have All the Trials Gone? Settlements, Nontrial Adjudications and Statistical Artifacts in the Changing Disposition of Federal Civil Cases,* 1 J. EMPIRICAL LEGAL STUD. 705 (2004).

5. Ontario Ministry of the Attorney General, The Courts in Ontario, Chapter 4, *available at* http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/courts.asp (last visited Mar. 1, 2006).

6. Macfarlane, *Culture Change, supra* note 1, at 295-99.

7. *Id.* at 277-78, 294.

(LSUC) is facing growing concerns about the competence of those it admits to the Ontario Bar to operate in the changing conditions of legal practice. Like its U.S. counterparts, the LSUC requires student lawyers to pass a series of post-law school assessments which it administers before they are "called to the Bar." Unlike the U.S. Bars, the Canadian provinces including Ontario continue to offer a teaching program which showcases critical knowledge and skills for newly qualified lawyers (formerly the Bar Admission Program, now the Licensing Program). While the nature of legal practice in Ontario has clearly evolved over the past 15 years—including, but not limited to, a significant shift in the balance between trial work and settlement advocacy—the content of the Bar Admissions Program and the testing of students on the program has gone almost unchanged.

Another growing concern for the LSUC and other professional regulators is the reputation of the legal profession for integrity, value-for-money and competence. There is a widespread sense that the commitment to professionalism—the idea of law as a vocation and not simply a business profession—is being lost.[8] The LSUC along with other organizational counterparts in Canada and the U.S. is looking for ways to revitalize debate over professionalism and ethical values. There is still little teaching about professional ethics at the undergraduate phase of legal education in Canada[9] and the LSUC sees a new Licensing Program as an obvious vehicle for this initiative also.

This article describes the research and development (a "skills audit") which has led to a new approach to skills training and qualification in the province of Ontario, which admits approximately 1,500 new lawyers to practice each year.[10] The purpose of the "skills audit" undertaken by the authors was to identify the core tasks and skills of a newly qualified lawyer, and especially to pinpoint what has changed in the practice of law in the last 15 years. The results have formed the basis of a new mandatory skills-training program (which commences in May 2006 and is to be known as the Skills and Professional Responsibility Program) which must be taken and passed by all Ontario lawyers before they can be called to the Bar.

While we shall not deal with these issues directly in this paper, it is important to recognize that the debate over professional legal education is about more than just content. It is also about costs and responsibility. Over the last 25 years, professional legal education in the U.S. has developed quite differently than similar programs in other parts of the common law world such as Canada, the United Kingdom, Australia and New Zealand. Most Bars in the U.S. offer minimal classroom teaching in preparation for the Bar examinations and rely heavily on private market providers who offer study support to students. In contrast, professional regulators in Australia, New Zealand and the United Kingdom have devoted significant resources to reforming and extending their professional training programs,

8. *See* Fred C. Zacharias, *Reconciling Professionalism and Client Interests*, 36 WM. & MARY L. REV. 1303 (1995); Anthony T. Kronman, THE LOST LAWYER: FAILING IDEALS OF THE LEGAL PROFESSION (1993). Anthony T. Kronman, *Professionalism*, 2 J. INST. FOR STUDY LEGAL ETHICS 89 (1999).

9. *See* W. Brent Cotter, PROFESSIONAL RESPONSIBILITY INSTRUCTION IN CANADA: A COORDINATED CURRICULUM FOR LEGAL EDUCATION, Montreal: Conceptcom (1992). *See* further discussion *infra* p. 5, 15.

10. Ontario has approximately 42 percent of the total number of lawyers in Canada (almost 29,000 practicing).

including the development of skills training and testing. Canada's provinces have to date been most influenced by the Commonwealth models in the development of similar classroom based skills curricula, although pressure to move to the less costly and more "hands-off" U.S. model has been growing.

The position of the authors, accepted by the LSUC in 2003,[11] is that in order to discharge its legislative obligations to ensure the competency of licensed practitioners[12] the LSUC must not only oversee, but also assess, the competency of prospective practitioners. It follows that if the LSUC (or any other professional regulator) is to assess knowledge-based and skills-based competency it must also take some responsibility for the enhancement of these competencies. The teaching of practical skills is patchy in Ontario law schools, and further preparation for the conduct of professional tasks and functions is therefore necessary at the licensing stage in order to bring students up to an acceptable level of skills competency. It may be that part of the explanation for the apparent difference in approach between Canada and the U.S. in providing programs of professional education at a qualifying stage is that law students in the U.S. are more likely to be exposed to practical skills training during their undergraduate work – however we are not in as position to assess this.[13]

As we have suggested above, an increasingly important and political driver in the debate over devoting resources to professional legal education and the implementation of standards is concern over professionalism and ethics in the practice of law. Professional responsibility remains the "orphan" of legal education. Professional ethical issues are either addressed tangentially and in passing in the rush to cover the material in substantive law courses or analyzed in depth in optional courses taken by a minority of students.[14] Several Canadian authors have sharply criticized both the LSUC and the law faculties for their neglect of professional responsibility.[15]

The LSUC, like other organizational counterparts in Canada and the U.S., has been looking for ways to revitalize the debate over professionalism and ethical values, organizing a series of fora on professionalism with the participation of academics, lawyers and judges. The evolving form of legal work outside the courtroom creates new challenges for the professionalism of lawyers and new threats to its reputation. For many years, two themes have been constant in the literature about the profession—the decline of professionalism and ethical standards and the low repute of the profession among the general public. There is a widespread sense that the commitment to professionalism—the ideal of the law as

11. MACFARLANE & MANWARING, REPORT TO THE TASK FORCE ON THE CONTINUUM OF LEGAL EDUCATION, Law Society of Upper Canada (2003).

12. Under the Law Society Act, this is the bargain of self-regulation, i.e., autonomy in exchange for accountability. Law Society Act, R.S.O. (1990). *See* Carl D. Schneider, *A Commentary on the Activity of Writing Codes of Ethics*, 8 MEDIATION Q. 83 (1985).

13. The work that has been done on the character of professional legal skills in the U.S. suggests that we are speaking of the very same skills—the difference is how and when to teach and assess such skills. *See, e.g.*, ROBERT MACCRATE, LEGAL EDUCATION AND PROFESSIONAL DEVELOPMENT—AN EDUCATIONAL CONTINUUM, Report of the Task Force on Law Schools and the Profession: Narrowing the Gap, American Bar Association (1992).

14. Cotter, *supra* note 8.

15. Harry Williams Arthurs, *Why Canadian Law Schools Do Not Teach Legal Ethics*, *in* ETHICAL CHALLENGES TO LEGAL EDUCATION AND CONDUCT 105 (Kim Economides ed., 1998); Adam M. Dodek, *Canadian Legal Ethics: A Subject in Search of Scholarship*, 50 U. TORONTO L.J. 115 (2000).

a vocation and not simply a business maximizing profits—is being lost. Professionalism in this sense relates to a constellation of professional values such as high ethical standards, competence, civility, collegiality and commitment to public service. Our work in developing the new Ontario program reflected these concerns and the curricular approach adopted is described in more detail below.

I. SOME BACKGROUND: CIVIL JUSTICE REFORM IN ONTARIO

While professional legal education in Ontario has a different structure than its U.S. counterparts, Ontario's experience with civil justice reform and its subsequent impact on legal practice appears very similar to developments south of the border. Ontario has an extensive system of case management and mandatory mediation in civil and family matters.[16] Judges now perform an important role as case "managers," as well as running case settlement conferences. In the two largest cities—Toronto and Ottawa—mandatory civil mediation and case management has been in effect for 10 years. One other city—Windsor—was added in 2004. Case management is regulated by rules of civil procedure and extends throughout most of the province. These justice reforms were the result of the Ontario Civil Review, which reported in 1994-95 that the costs and the delays in the civil justice system were putting it out of reach of ordinary people.[17] Like other Canadian provinces, a commitment to access to justice is a hallmark value of provincial justice policy, no matter which political party is in power. The introduction of mandatory mediation and case management was significantly impelled by a political determination to improve not only the efficiency, but also the accessibility of the civil justice system. In 1996 the legal profession and the Bench were told by then Ontario Attorney-General Charles Harnick that if they would not accept these reforms, they would be imposed upon them via legislation.[18]

In addition, Ontario and other Canadian provinces have put in place an extensive system of judicial dispute resolution or JDR. This includes not only traditional pre-trials but earlier meetings such as mandatory settlement conferences with a judge. Judges, especially those coming onto the Bench in the last five years increasingly see themselves as facilitators of settlement and, as a result, are raising the expectations of counsel to perform effectively in these arenas.[19]

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16. ONT. R. CIV. P. 24.1 (mandatory mediation); ONT. R. CIV. P. 77 (case management).

17. Ontario Ministry of the Attorney General, The Cost of the Civil Justice System, Chapter Eleven, *available at* http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/cjr/firstreport/cost.asp (last visited Mar. 1, 2006).

18. Kirk Makin, *Ontario looks at mandatory mediation in civil suits: Attorney-General threatens to introduce law making two sides talk out their differences before cases can go to court,* GLOBE & MAIL, Jan. 7, 1998, at A9.

19. The National Judicial Institute, responsible for the continuing education of both federal and provincial judges in Canada, includes an increasing number of courses in its curriculum on settlement, facilitation and negotiation skills for judge. A Delphi survey asking judges to identify skills and knowledge that they believed they would be important to them in the coming years highlighted the importance judges attached to developing settlement and communication skills appropriate for judicial dispute resolution (JDR). *See* Julie Macfarlane, FINAL REPORT ON THE RESULTS OF THE DELPHI SURVEY FOR THE NATIONAL JUDICIAL INSTITUTE (2003) (paper on file with the author). Another sign of the institutionalization of this approach is that settlement facilitation is beginning to be regarded as a discrete specialism by some members of both the federal and provincial courts.

II. DEVELOPING THE NEW ONTARIO PROGRAM

A. *Conducting the Skills Audit*

The first step in creating a new program that would reflect the contemporary reality of civil practice was to ask lawyers (and judges) about the skills and knowledge they needed to be able to function effectively in practice today. In particular we were interested in identifying the "gap" between training and practice and to ask lawyers to describe to us what skills and knowledge they found they needed to be effective in practice which they had not learned either at the undergraduate or the professional stage of their legal education. This gap has been identified in many other jurisdictions as the gap between graduation from law school and the skills required for the early years of practice.[20] We were also interested in asking more experienced lawyers whether they could identify any significant changes, or changes in emphasis, in core practice skills and knowledge since they were called to the Bar.

Probably the most rigorous and costly approach to answering this question is to use systematic observation of lawyers in practice using validated observation scales over a period of time.[21] A large volume survey approach is another option.[22] However, we did not have the resources necessary to conduct a validated observation study, and rejected a large volume survey in favor of an approach which we hoped would build support among the practicing Bar for a new pre-admission training program. The methodology we developed for this purpose contemplated two stages to our "skills audit," involving focus groups and Delphi panels to directly solicit input on the content of a new program. This way we could be systematic about including members of both the litigation and the non-litigation Bar, and representatives of large city firms as well as smaller firms and solo-practitioners. This approach also enabled us to travel to different parts of Ontario where different cultures of practice might exist and avoid the problem of overlooking the more geographically remote parts of the province (a very Canadian challenge!).

We first conducted a series of focus groups in the cities of Toronto, Windsor, Ottawa and Thunder Bay and explored five broad questions with each group:

- what are the skills required for articling?[23]
- what are the most important skills needed by a new associate lawyer?
- where is the learning curve the steepest for new lawyers?
- how do professional responsibility issues arise in the context of practice management and other skills practice?

20. This "gap" has been studied in many common law jurisdictions. *See* Robert MacCrate, *Report of the Task Force on Law Schools and the Profession: Narrowing the Gap*, American Bar Association, 1992; Marre Committee, A TIME FOR CHANGE: REPORT OF THE COMMITTEE ON THE FUTURE OF THE LEGAL PROFESSION, General Council of the Bar/ The Law Society, 1988.

21. *See* the methodology employed in Avrom Sherr, *Solicitors and their Skills*, Law Society of England and Wales, Research Studies Series 1991.

22. Gerry Chambers, & Stephen Harwood, SOLICITORS IN ENGLAND AND WALES: PRACTICE, ORGANIZATION AND PERCEPTIONS, FIRST REPORT "THE WORK OF THE SOLICITOR IN PRIVATE PRACTICE, 1990.

23. Articling is an apprenticeship period, one year in duration.

- what changes in core skills and knowledge are you aware of since you began to practice?

Participation in focus groups in each city was solicited from a broad representative sample of attendees from large/small firms, and generalist/specialist firms. Particular attention was paid to the inclusion and representation of traditionally excluded groups. The results of the focus group discussions were next summarized in the form of a Preliminary Skills Taxonomy.[24] This taxonomy was also informed by skills audits conducted in other common law jurisdictions.[25]

The Preliminary Taxonomy was sent for review to five Delphi panels. The "Delphi" technique uses panels of specially appointed or self-selected experts to review and appraise given documents. Originally developed by the RAND Corporation in 1969 for technological forecasting, Delphi is a useful technique for stimulating debate and generating data where panel members may be unable to meet face-to-face in time and space.[26] We created a total of five Delphi panels for this stage of the survey. Four panels each represented a different size of firm: 1-5, 6-30, 31-99, and one panel for those practicing in firms of larger than 100. Each panel was made up of twelve lawyers. We paid careful attention to a balance of gender, ethnicity and the various stages – junior, mid-career and senior – of a legal career. We created a fifth panel comprised of members of the Bench.

The first Delphi round circulated the Preliminary Taxonomy and asked respondents, "How complete is this taxonomy?" and "How accurate is this taxonomy?" The results were integrated into the Taxonomy and a second Revised Taxonomy produced, which was intended to be as complete and accurate as possible. In a second Delphi round, respondents were asked to identify which of the subskills within the eight skills categories were the most important to the work of a newly qualified lawyer and should be emphasized in the new program.

B. Results

The Final Taxonomy of Skills reflected a widespread consensus of input from both focus groups and Delphi panels. While different lawyers and judges may place somewhat different emphasis on its different parts, the final identification and listing of core skills was uncontentious. There were also some clear patterns in the priorities derived, although inevitably there is some difference between the emphasis placed on, for example, client interviewing, between smaller firms that deal directly with personal clients and larger firms where some new lawyers would rarely have direct face-to-face contact with clients, at least in the early years of practice. All participants in our study were conscious that their objective

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24. While the Taxonomy is described as a "Taxonomy of Skills" for ease of reference, it clearly includes professional attitudes and behaviors.

25. *See* MacCrate, *supra* note 19; Marre Committee, *supra* note 19. *See also* The Australian Professional Legal Education Council, Competency Standards for Entry Level Lawyers Law Admissions Consultative Committee, Practical Legal Training, Nov. 2000; Australian Law Reform Commission Managing Justice: A Review of the Federal Justice System Report No. 89 (1999), *available at* www.austlii.edu.au/au/other/alrc/publications/reports/89) (last visited Mar. 1, 2006).

26. THE DELPHI METHOD: TECHNIQUES AND APPLICATIONS, 3-10 (Harold A. Linstone & Murray Turoff eds., 1975).

was to develop a model of competencies that would enable a new lawyer to practice independently if she or he chose to do so.

There are six categories of skills in the Final Taxonomy: Client Relationships; Managing a Client File (Dispute Resolution); Managing a Client File (Transactions and Applications);[27] Legal Research and Writing; Practice Management; and Ethical Issues and Professionalism. The summaries below present a brief summary of respondents' opinions on the importance of these skills and their relative weight within the complete skill set of a new lawyer entering practice in the 21st century. The Final Taxonomy is reproduced in full at Appendix A[28] and the detailed list of sub-skills under each category, which are referred to below can be found there.

1. Client Relationships

There was strong agreement that client communication and relationship-building skills are relevant regardless of the type of practice. A typical comment was the statement of one lawyer that "New lawyers seem to be technically competent but lack people skills; they don't know how to look at different approaches to solve a problem."[29] In this category, initial interviewing in order "to gather information and understand the client's problem"[30] and "providing the client with advice for decision-making"[31] were prioritized, followed by "communicating effectively with the client."[32] Representatives of larger firms (Panel 4) also emphasized preparing the initial retainer letter and Panel 5 (judges) attached particular importance to "identifying and dealing with troubled or difficult clients."[33]

There was general agreement that client service skills in the 21st century include resolving the client's problem efficiently and at minimal cost. This requires discussion of multiple routes to dispute resolution and does not always mean litigation.[34] The LSUC Rules of Professional Conduct already include a provision that requires lawyers discuss dispute resolution options with their clients, but hitherto little attention has been paid to this in legal education. The new Ontario program will spend more time reinforcing this skill set described below.

The data derived from the skills audit concerning the importance of the skills necessary to manage the client relationship neither directly support nor contradict the "vanishing trial" thesis. A lawyer has to manage this relationship carefully regardless of the method of dispute resolution chosen. The importance attached to

27. Applications include those for licenses, permits, zoning approval, and charitable status. These are administrative or regulatory procedures which may be necessary in order to complete a transaction or for achieving a client's objectives.

28. *See infra* app. A.

29. App. A, *infra* Part C.i.

30. *Id.*.

31. *Id.* at Part C.vi.

32. *Id.* at Part C.ix.

33. *Id.* at Part C.xii.

34. Rule 2.02(3) reads "The lawyer shall consider the use of alternative dispute resolution (ADR) for every dispute, and, if appropriate, the lawyer shall inform the client of ADR options and, if so instructed, take steps to pursue those options." LAW SOC'Y OF UPPER CANADA'S RULES OF PROF'L CONDUCT R. 2.02(3) (2001) *available at* http://www.lsuc.on.ca/regulation/a/profconduct/rule2 (last visited Mar. 10, 2006).

telling clients about options other than litigation suggests that there is a shift away from the trial in light of factors such as cost and client interests. However, the careful explanation of choices is necessary, even if the file is destined for trial.

Perhaps the importance attached to these skills by respondents reflects the changing nature of the lawyer-client relationship. Many clients are quite sophisticated, with an increasingly clear understanding of the downsides of litigation, and want the lawyer to justify any proposed strategy. They are also less passive in this relationship and want to play a more active role in determining legal strategy. Other clients may have unrealistic expectations about the possibility of total victory at trial. Lawyers recognize that these clients need to be educated about the risks and costs of litigation—and the comparative rarity of resolution by trial—as well as the advantages of other strategies. Lawyers have to learn the skills required to communicate, explain and evaluate choices with their clients. As the choices expand, these skills become more important.

2. Managing a Client File (Dispute Resolution) & Managing a Client File (Transactions and Applications)

These two categories were separated so that the Taxonomy reflected both contentious and non-contentious work, and the full range of administrative and transactional work that lawyers perform for clients. Some lawyers practice all these types of work, but they do implicate somewhat different basic knowledge and skills.

Under the Dispute Resolution head, the sub-skill clearly ranked highest was "assisting the client to identify and establish realistic expectations regarding possible outcome."[35] Among other things, ensuring realistic expectations clearly requires that the lawyer know how to "prepare for the appropriate form of dispute resolution"[36] and "develop a strategy with the client"[37] (these two sub-skills were ranked second-highest by respondents). Another aspect of dispute resolution mentioned by many in the focus groups was the need to be ready to work effectively with a range of third parties in a range of capacities—including judge, mediator, court clerk, and master.[38] One lawyer spoke about the need for new lawyers to "integrate ADR and case management into litigation—not so much to seek alternatives as to develop a continuum."

In the Transactions and Application category the highest ranked sub-skills reflected very similar themes of thorough preparation, assessment and the development of strategy (sub-skills (v) (vi) and (ix)).[39]

Based on comments from the focus groups, responses from the Delphi panels and documented developments in litigation practice, we recommended to the LSUC that the new Ontario program focus in the limited time available for instruction on preparation for settlement advocacy—in negotiation, mediation, and settlement conferences—and on preparation for motions and discoveries, rather than on trial skills.

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35. App A., *infra* Part D.ix.
36. *Id.* at Part D.xii.
37. *Id.* at Part D.x.
38. *Id.* at Part D.vii.
39. *See infra* app. A.

The skills described in the Managing a Client Files sections of the Taxonomy are most indicative of a shift in the focus of the practice of law. The data from our skills audit suggest that lawyers need to develop skills which are much broader than those used in trial advocacy. Lawyers still need those skills but they need to broaden the range of skills they can offer clients. While they are still client advocates they have to engage in new forms of advocacy in different fora. A significant component of their advocacy is expressed in writing—in pleadings, in motions, in pre-trial conference and mediation briefs. Moreover much of this advocacy is designed to help clients accomplish goals—obtain a license, register a patent, end a relationship, etc.—which may never require a trial in the traditional sense.

3. *Legal Research & Writing*

We knew from our discussions with the focus groups there were some sharp divisions of opinion on the teaching and testing of research and writing skills at the professional level. Therefore we asked the Delphi panels a very specific question about using time on the new Ontario program to teach and test these skills. A virtually equal number of respondents felt (i) very strongly that research and writing must be taught and (ii) that these skills are taught in law school and that a "refresher" course would be sufficient. Among the former group, the point consistently made was that writing and research as taught in law school tends to focus on research papers and less on written advocacy—which was frequently described as a core skill for new lawyers. Those in the latter group appear primarily concerned about taking time away from other critical skills teaching in order to "remediate" research and writing skills that should be taught in law school. Based on this data, we recommended to the Society that the new Ontario program offer skills education in relation to research and writing with a focus on transitional skills building (i.e. the transition from academic writing to writing for practice) and specific forms of legal drafting rather than as remedial training in basic research and writing. We also recommended that a focus on written advocacy should also reflect the comments made consistently by Delphi and focus group participants that oral advocacy is less central now to a lawyers work than written advocacy and negotiation.

The skills audit makes it very clear that regardless of the evolution of the practice of law, lawyers still need to know the law or be able to find out the relevant law. They need to be able to research a topic thoroughly and effectively regardless of the type of services they are providing their clients and of the likelihood of trial. If it is true that written advocacy is at least partially replacing oral advocacy (see above), then writing skills are becoming more and more important. Our data suggests that this shift is real and significant.

4. *Practice Management*

There was almost unanimous support for the idea that practice management skills should form an integral part of the new Ontario program. Respondents ranked "managing time and setting priorities" as the most important skill to work on. However, the response that lawyers need to learn practice management skills,

offers little insight into the evolution of the types of work lawyers are doing. It is clear that lawyers are running businesses and must learn to manage those businesses effectively if they are to survive. These skills were especially emphasized by lawyers in smaller firms because they have to rely more on their own skills in this area unlike larger firms, which can provide management support that can free the individual lawyer from some of these management tasks.

5. Professionalism and Ethics

Numerous concerns about professionalism and reputation were clearly expressed by respondents in the course of the skills audit, with respondents unanimously stressing the importance of integrating ethics and professionalism into the new Ontario program. In the focus group discussions, respondents raised concerns about declining ethical standards, the lack of civility in the profession and their perception that graduating lawyers are not prepared for the ethical challenges of the practice of law. These concerns do not relate directly to the shift in legal work as a result of the decline in the number of trials. For example, anecdotes given to illustrate the loss of civility often came from cases which went to trial (refusal to provide full disclosure in spite of rules, procedural maneuvering, rudeness). Nonetheless, some of the examples of new ethical challenges do suggest that, as legal work shifts ways from its traditional trial focus, there may be new opportunities for unethical behavior. Lawyers involved in real estate transactions must be more vigilant than ever to ensure that they do not inadvertently take part in real estate fraud and money laundering. Similarly, the involvement of lawyers in high-profile corporate fraud (Enron, Hollinger and others) shows that lawyers who work in areas where the trial is a rare event may face almost irresistible temptations to violate basic standards of ethics and professionalism given client pressure and the huge sums of money at stake.

The Final Skills Taxonomy reflects the importance which lawyers attach to ethics and professionalism. Many respondents commented that these commitments must inform the entire curriculum and that members of the Bar should see themselves as role models for law students. The LSUC and the profession are rightly concerned about the knowledge of graduating lawyers relating to ethics and professional norms. There is little teaching about professionalism among Canadian law schools. Only a minority of students will take a course in professional responsibility during their L.L.B. Program. Some argue that law schools use the pervasive method in which ethical issues are integrated throughout the curriculum. However, in spite of the efforts of law faculties to increase the number of courses offered and encourage integration, it is highly unlikely that the great majority of law students will even read the Rules of Professional Responsibility before graduating. The LSUC sees the new professional program as a way of dealing with concerns about professionalism and ethics.

The results of the skills audit demonstrate the importance which the profession attaches to issues of professionalism and reputation. There is some, primarily anecdotal, evidence that these concerns relate to changing forms of legal practice. However, it is not yet clear that the profession and its regulatory body have fully assimilated the implications of the vanishing trial for professionalism.

Sometimes, the lament for the decline in professionalism is permeated with nostalgia for older, disappearing forms of practice. This should be deeply prob-

lematic given the forms of gender, racial, ethnic, religious and economic exclusions that permitted the complacent collegiality of traditional professionalism. The "vanishing trial" data and the descriptions of the evolution of legal work provided by the skills audit suggest that professionalism itself must be critically rethought to ensure that it reflects the evolving reality of the practice of law and the ethical challenges presented by new forms of legal work. Unless ethical rules and professional norms reflect the work that lawyers are actually doing for their clients, there is little likelihood that the efforts of the profession to improve its reputation will bear fruit.

We recommended to the LSUC that the new professional program take an extremely proactive approach to the integration of ethical and professional issues at every possible opportunity. The next section describes how we translated this and other results from the skills audit into the substance and teaching and assessment methods of the new program.

III. TRANSLATING THE SKILLS AUDIT INTO THE NEW CURRICULUM

The skills audit identified the specific skills and sub-skills that would be taught and assessed in the new Ontario program. They also led to the development of an underlying philosophy of action for the design of the curriculum. A traditional model of curriculum design which focuses on knowledge and content seems inappropriate to our task—instead we preferred an approach which identified underlying "drivers" for the curriculum. These would be the foundational concepts, values and goals upon which all subsequent curriculum design and pedagogic decisions would be based.[40] The teaching methods adopted and used, the learning objectives developed, the assessment processes and the criteria applied for student assessment must be consistent with and further these goals.

The two primary "drivers" for the new Ontario program (to be known as the Skills and Professional Responsibility Program) reflected the recurrent themes of our many discussions with members of the Bar and Bench during the skills audit and are as follows:

1. **Lawyers in the 21st century need to be effective, self-initiated problem-solvers** who are able to identify the elements of what they need to know and to be able to do to carry out a task, even if they are approaching it for the very first time. Formulaic dispute resolution is rarely, if ever, an option. Whether discussing civil procedure, writing and drafting skills, inter-personal skills, practice management issues or professional responsibility, this theme prevailed throughout our discussions. This is consistent with work in other jurisdictions,[41] as well as the path-breaking work of the MacCrate Report in the U.S.;

40. Content-based curriculum design has long been seen as inadequate, especially in professional programs which prepare students for the challenges and dilemmas of practice. *See* ALBERT VICTOR KELLY, KNOWLEDGE AND CURRICULUM DESIGN 101-127 (1987); Hilda Taby, *The Functions of a Conceptual Framework for Curriculum Design, in* THE CURRICULUM: CONTEXT, DESIGN AND DEVELOPMENT (R. Hooper ed., 1972).

41. *See* KIM ECONOMIDES & G. SMALLCOMBE, PREPARATORY SKILLS FOR TRAINEE SOLICITORS (1991).

2. **Lawyers in the 21st century must be fully cognizant and respectful of their obligations as professionals in the service of the public.** If the cognitive and intellectual thread that ran through our discussions was that of problem-solving, the attitudinal thread was professionalism. We should note that this is still an aspirational rather than a concrete concept for many—it was generally easier for discussants to describe what professionalism was not rather than what it is—but we take seriously the need to reflect a desire for more than efficiency and efficacy as goals in professional legal education. Moral and attitudinal development is as important as, and goes hand in hand with, cognitive competence and maturity.[42]

These premises drive the curriculum in some very specific directions. Professional legal education should emphasize how to learn what to do in new and unfamiliar situations (i.e., to problem-solve) as much, or more than, to teach given knowledge. To enable and develop this ability, the curriculum must model and value reflective practice, self improvement and growth, as both intellectual and attitudinal development. This includes, for example, a commitment to providing formative assessment or "practice" assessments and feedback to enable students to learn from the assessment experience and improve their performance incrementally. Teaching and learning about professionalism, professional responsibility and ethics should be integrated throughout. Finally, the curriculum should adopt teaching and learning methods that relate attitudinal development to cognitive development, emphasizing the identification of dilemmas, the reconciliation of differences, and principled decision-making.

The teaching and learning method which lies at the heart of the new curriculum meets these needs. Problem-Based Learning (PBL) is a teaching and learning method used widely in medical and other programs of professional education,[43]

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42. William J. Perry, Jr., *Cognitive and Ethical Growth: The Making of the Meaning*, *in* THE MODERN AMERICAN COLLEGE: RESPONDING TO THE NEW REALITIES OF DIVERSE STUDENTS AND A CHANGING SOCIETY 76, 107-110 (1981).

43. *See also* PROBLEM-BASED LEARNING IN EDUCATION FOR THE PROFESSIONS (D Boud ed., HERDSA, 1985); Victor R. Neufield & Howard S. Barrows, *The "McMaster Philosophy": an Approach to Medical Education*, 49 J. MED. EDUC. 1040, 1042-44 (1974); HOWARD S. BARROWS & ROBYN M. TAMBLYN, PROBLEM-BASED LEARNING: AN APPROACH TO MEDICAL EDUCATION (1980). There is now a voluminous literature on the application of PBL to medical education, in programs ranging from Canada, the U.S., Australia, the U.K. and Europe. *See, e.g.*, Problem-Based Learning Initiative Bibliography, *available at* http://www.pbli.org/bibliography/index.htm (last visited Feb. 14, 2006). While beginning in medical education, PBL is now used also in several other disciplines. *See, e.g.*, Project-based Learning in Engineering Homepage, *available at* http://www.pble.ac.uk/about-pble.html (last visited Feb. 15, 2006) (project-based learning programs in engineering available at the University of Nottingham, Loughborough University, Nottingham Trent University and DeMontfort University); Viviana A. Rivarola & Mirta B. Garcia, *Problem-Based Learning in Veterinary Medicine: Protein Metabolism*, 28(1) BIOCHEMICAL EDUC. 30, 30-31 (2000) (problem-based learning in veterinary medicine); B. English et. al., *Educating Social Workers for an Uncertain Future*, *in* REFLECTIONS ON PROBLEM-BASED LEARNING (S. Cowdry Chen et al. eds, 1994) (problem-based learning in social work); Jill Gibbons & Mel Gray, *An Integrated and Experienced-based Approach to Social Work Education: The Newcastle Model*, 21(5) J. OF SOC. WORK EDUC., 529, 529-49 (2002) (evaluation of problem-based learning program in social work at University of Newcastle); University of Newcastle: School of Architecture and Built Design Homepage, *available at* http://www.newcastle.edu.au/school/architecture-built-environ/index.html (last visited Mar. 16, 2006) (problem-based learning program in the school of architecture).

and increasingly used in law.[44] The rationale for its use in legal education is the same as that in medicine, engineering and other professional programs—by focusing on tasks and skills PBL attempts to replicate the actual "messiness" (or "plaid") of practice rather than to teach "recipes" for the accomplishment of the same. Instead, students are faced with problems which they do not always have the means to solve and must develop a process for finding the answers—whether research, talking with a mentor or a peer, or simply trial and error. As well, PBL is seen as a means of equipping future professionals to "manage" rather than assimilate knowledge, in an environment where curricula can no longer expand to cope with the demands of the ever-expanding knowledge base of individual professions.[45] Students who have learned using PBL are able to retain knowledge longer and are much better than students taught in traditional classrooms at integrating knowledge and clinical skills.[46]

Students work in "firms" of at most six persons and will handle a number of files over the course of the proposed five-week program. Each group generally represents a client (and in some cases another group will represent the other side in the file) and draws on various forms of real-life documentation, including an originating memorandum with instructions from a principal or supervisor, correspondence, contracts, attendance notes from interviews, etc. In the course of their work on the file, students might also be asked to interview their client, and perhaps others, to plan for and conduct a negotiation with the other side, to proceed through discoveries, pre-trial motions and perhaps participate in a mediation or case settlement conference. Each file is constructed as a jigsaw puzzle of facts and materials and effectively simulates file-management, time-management, and other practice-management issues. No one student could possibly handle the volume of work required, and therefore delegation of work among the team followed by regular joint briefing is the norm. Each PBL file on the new Ontario program has also been designed to contain a series of professional ethical dilemmas that students must identify and address.

The instructor or tutor in PBL plays the role of facilitator and coach rather than the traditional didactic role of instructor.[47] Both the philosophy of the method—which clearly requires students to take greater responsibility for their

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44. For example, PBL is being used to teach law in the U.K. *See* Problem-based Learning (PBL) in Law, U.K. Centre for Legal Education Homepage, *available at* http://www.ukcle.ac.uk /resources/pbl/index.html (last visited Mar. 16, 2006). The College of Law is actively involved in this initiative. For a description of a professional course (offered by university law schools in the U.K.) which is taught using PBL, *see* R. Payne, *Peer Learning at University*, 37(2) THE LAW TEACHER 143 (2003). In Australia, PBL is being used at the College of Law New South Wales. *See* Keith Winsor, *Applying Problem-Based Learning to Practical Legal Training*, *in* THE CHALLENGE OF PROBLEM-BASED LEARNING 217, 217-19 (David Boude & Grahame Feletti, eds., 1997). The Hong Kong Professional Legal Training Program at the City University of Hong Kong was taught using PBL from 1991-1995. *See, e.g.*, Julie MacFarlane & Pat Boyle, *Instructional Design and Student Learning in Professional Legal Education: From Theory to Practice*, 4 LEGAL EDUC. REV. 63 (1993).

45. MAGGI SAVIN-BADEN, PROBLEM-BASED LEARNING IN HIGHER EDUCATION: UNTOLD STORIES (2000).

46. G.R. Norman & H.G. Schmidt, *The Psychological Basis of Problem-Based Learning: A Review of the Evidence*, 67(9) ACADEMIC MED. 557, 557-62 (1992).

47. *See* W. Pallie & D.H. Carr, *The McMaster Medical Education Philosophy in Theory, Practice and Historical Perspective*, 9 MEDICAL TEACHER 59, 66-67 (1987); J.C. Moust & H.J. Nuy, *Preparing Teachers for a Problem-Based Student-Centered Law Course*, 5 J. OF PROF'L LEGAL EDUC. 16 (1987).

own learning than is customary in a didactic program—and the multi-dimensional and open-ended nature of the problem itself means that the tutor's role is that of a "sounding board" and a consultant on the process of problem-solving, rather than as a subject expert.

PBL methodology is an excellent "fit" with the type of professional and collegial work practices that the LSUC wishes to encourage and promote.[48] PBL encourages the integration of attitudes with appropriate knowledge and skills, ". . . reflected in choices and actions which assess and determine priorities, recognize conflicts and . . . respond to the wider societal demands involved in moral and ethical questions."[49] PBL provides a context for the modeling of professional behavior including but not limited to collegiality, teamwork, delegation and collective effort, and critical discussion of the norms of professionalism.

IV. CONCLUSIONS

Our skills audit was not designed to test the "vanishing trial" thesis but rather to gather data on what lawyers are actually doing in their day-to-day practice. The vanishing trial thesis discusses what lawyers are not doing—conducting trials. In contrast, we needed information about what they are doing in order to design a professional skills program which would prepare newly-graduated lawyers for the work they would be doing during their articles and early years of practice.

The skills audit data reflect the fact that trial advocacy is no longer the central skill which lawyers use on a day-to-day basis. The lawyers involved in the skills audit told us very clearly that entry-level lawyers will seldom take a file to trial. They said that entry-level lawyers need to develop a range of skills other that oral advocacy in order to be effective. The Taxonomy describes the skills these lawyers described as important. We believe that the Skills and Professional Responsibility Program we have developed for Ontario—a five-week classroom program which uses PBL methodology in order to assist students in developing the required skills—reflects the evolving reality of legal practice, part of which is captured by the vanishing trial data.

However our deeper knowledge of the evolving reality—what tasks and skills are replacing trial work—remains incomplete. We are just at the beginning of understanding the future and further implications of the vanishing trial phenomenon for the regulation of the profession, the assessment of competence on entry into the profession, and professional ethics.[50] The data from our skills audit, along with other empirical work we have conducted over the past decade,[51] certainly

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48. Other professions such as medicine have adopted PBL for similar reasons. *See* James W. Tysinger, et al., *Teaching Ethics Using Small-Group, Problem-Based Learning* 23(5) J. OF MEDICAL ETHICS 315, 315-18 (1997).

49. Gloria Dall'Alba & Jorgen Sandberg, *A Competency-Based Approach to Education and Training*, 15(1) HERDSA NEWS 2-5 (1995).

50. *See* Carrie Menkel-Meadow, *Is the Adversary System Really Dead? Dilemmas of Legal Ethics as Legal Institutions and Roles Evolve*, 57 CURRENT LEGAL PROBLEMS (Jane Holder, et al. eds, 2004); Carrie Menkel-Meadow, *Ethics in Alternative Dispute Resolution: New Issues, No Answers from the Adversary Conception of Lawyers' Responsibilities*, 38 S. TEX. L. REV. 407, 409 (1997).

51. *See* Julie MacFarlane & Michaela Keet, *Civil Justice Reform and Mandatory Civil Mediation in Saskatchewan: Lessons from a Maturing Program*, 42 ALBERTA L. REV. 677, 685-88 (2005); Julie MacFarlane, *Experiences of Collaborative Law: Preliminary Research from the Collaborative*

supports the contention that the ways in which effective lawyers serve their clients is changing, and that many lawyers themselves (with greater and lesser degrees of enthusiasm) observe this change also. Scholarly writing on the proliferation of legal and informal processes and fora[52] has preceded the development of a solid vanishing trial thesis and has already had some influence on professional organizations.[53] However, we do not yet have enough information to describe this changing role or to fully understand its implications for professional legal education. Nonetheless, the willingness of the LSUC to undertake a process of research-based curriculum review and accept a program that places substantially more emphasis on negotiation and pre-trial dispute resolution skills than previous iterations may be a significant first step towards reconciling our knowledge about what lawyers do with what we teach them to do.

APPENDIX A

Taxonomy of Skills
Prepared for the Law Society of Upper Canada, August 2004

I. Ethical Issues
   A. Identifying professional ethical dilemmas as and when they arise in practice and dealing with these appropriately, in particular
      1. Identifying and responding appropriately to potential and actual conflicts of interest
      2. Understanding and respecting the extent and limits of the confidentiality obligation
      3. Carrying out fiduciary duties to clients and others (Ranked #1)
   B. Knowing the Rules of Professional Conduct and practicing law accordingly (Ranked #1)
   C. Articulating his or her own ethical framework for making choices that respond to ethical dilemmas
   D. Dealing ethically with members of the profession (Ranked #2)
   E. Dealing ethically with members of the public
   F. Dealing ethically with courts, government agencies, tribunals and regulatory bodies
   G. Developing a mentoring relationship with a more experience lawyer (or lawyers) in order to seek advice on ethical, professional, competency and other issues which arise in the practice of law.

Lawyering Research Project, 2004 J. DISP. RESOL. 179, 188-218. *See also* Macfarlane, *Culture Change*, *supra* note 1.

52. Sally Engle Merry, *Legal Pluralism*, 22(5) LAW & SOC'Y REV. 869, 889-92 (1988).

53. In Canada, the rise and significance of legal pluralism was recognized in a 1999 Report by the Canadian Bar Association. *See* Canada Bar Association Joint Multi-Disciplinary Committee on Legal Education, *Attitudes, Skills, Knowledge: Recommendations for Changes to Legal Education to Assist in Implementing Multi-Option Civil Justice Systems in the 21st Century*, at iii-x (2000), *available at* http://www.cba.org/cba/advocacy/pdffiles/syseng.pdf (last visited Mar. 11, 2006) (Committee responding to Recommendation 49 of the Systems of Civil Justice Task Force Report).

II. Professionalism
This section strictly speaking deals with professional values rather than skills as such. The competent lawyer, at the outset of her or his career, should:
A. Demonstrate a commitment to excellence and professionalism (Ranked #2)
B. Demonstrate a commitment to civility
C. Demonstrate a commitment to collegiality
D. Demonstrate a commitment to providing effective and competent legal services to advance the client's interests while upholding the law (Ranked #3)
E. Demonstrate a commitment to public service (including pro bono work)
F. Deal with staff, colleagues, clients and courts with courtesy and respect (Ranked #1)
G. Deal appropriately and professionally with news media and press in all forms
H. Demonstrate a commitment to continuing professional education and development
I. Demonstrate a commitment to continuing his or her own legal education.
J. Demonstrate a commitment to the promotion of justice
K. Demonstrate a commitment to serving with respect and dignity the many peoples of Ontario

III. Client Relationships
A. Interviewing to understand problems, issues, context and goals or objectives of the client and to gather relevant information (Ranked #1)
B. Determining if one is competent to handle the file, identifying the steps necessary to become competent or referring the file to someone else
C. Identifying the client's special needs and, where necessary, providing appropriate accommodation
D. Demonstrating cultural and logistic awareness and sensitivity
E. Retaining services necessary to enable the client to communicate effectively (i.e. an interpreter) where necessary
F. Advising the client about decisions that must be made and options that are available (Ranked #1)
G. Preparing the initial retainer letter
H. Establishing consultation fee
I. Communicating effectively with clients (Ranked #3)
J. Identifying the fraudulent or unscrupulous client
K. Managing client expectations
L. Identifying and dealing with troubled or difficult clients
M. Terminating client relationships

IV. Managing a Client File (Dispute Resolution)
A. Understanding client goals
B. Assessing what facts need to be obtained and from which sources and documents those facts can be obtained
C. Investigating, marshalling and understanding the facts
D. Developing strategies for obtaining necessary facts from the client
E. Identifying all the parties involved in the dispute
F. Communicating effectively with all parties involved in the dispute, including unrepresented parties

G. Communicating with third parties while taking into account privacy law and confidentiality implications
H. Developing a theory of the file
I. Assisting the client to identify and establish realistic expectations regarding possible outcomes (Ranked #1)
J. Developing a dispute resolution strategy with the client (including making choices and decisions for file direction) (Ranked #2)
K. Preparing and presenting an ADR/litigation budget and ensuring that the client understands and accepts it
L. With the client, assessing the strengths and weaknesses of various dispute resolution strategies according to agreed criteria (eg. cost-analysis, efficiencies of time) and likelihood of achieving client goals
M. Planning strategy in light of applicable limitation periods
N. Preparing for the different forms and forums of dispute resolution available at the various stages of the case (Ranked #2)
   1. Negotiation
   2. Mediation
   3. Case settlement conferences
   4. Arbitration
   5. Motions
   6. Discoveries
   7. Pre-trial
   8. Trial/hearing
   9. Sentencing/speaking to remedy
   10. Appeal
O. Implementing the dispute resolution strategy (above) and using the skills of advocacy appropriate to the chosen forum
P. Drafting the settlement agreement
Q. Communicating effectively with the client at all stages of the process
R. Ensuring that any agreement or decision is implemented
S. Keeping the entire process open to new ideas and new information

V. Managing a Client File (Transactions and Applications)
A. Understanding the result sought by the client
B. Investigating and understanding the facts
C. Developing a theory of the transaction/application
D. With the client, identifying the range of possible strategies available
E. With the client, assessing the strengths and weaknesses of the possible strategies according to agreed criteria (eg cost analysis, efficiencies of time) (Ranked #1)
F. With the client, developing a strategy for successfully completing the transaction/application (Ranked #1)
G. Identifying the appropriate regulatory agency or forum/parties/players
H. Identifying and determining any third party requirements (eg insurance)
I. Identifying, completing and filing the appropriate documentation (Ranked #1)
J. Identifying the need for expert advice and the sources of such advice
K. Conducting a negotiation
L. Reaching an agreement OR
M. Preparing for dispute resolution (see (D)).

N. Communicating effectively with the client at all stages of the process
O. Assisting the client with advice and recommendations designed to expedite future transactions
P. Keeping the entire process open to new ideas and new information

VI. Legal Research
A. Developing a research plan in order to address the problem raised by file and deal with relevant issues
B. Conducting electronic research using relevant legal and non-legal data bases
C. Conducting library/paper-based research
D. Identifying relevant legal concepts (Ranked #2)
E. Analyzing results, including sorting cases, legislation and secondary legal materials according to relevance, identifying leading cases and trends in the law, and citing all sources appropriately (Ranked #1)
F. Identifying conflicting lines of jurisprudence, making appropriate analogies and distinctions, determining how to resolve ambiguities in judicial decisions, among judicial decisions and in legislation
G. Updating cases and legislation as required
H. Analyzing and applying legislation
I. Conducting research appropriate to transactions (e.g., review of Official Plans, zoning by-laws and other relevant regulatory sources)
J. Drafting a legal memorandum which analyzes and presents the results of the research in an effective manner and makes recommendations for client action (Ranked #2)

VII. Writing
A. Writing clear, concise and accurate English and/or French (Ranked #3)
B. Writing appropriately for the given purpose (letters, memos, presentations) and for a specific audience (client, colleague, judiciary, member of the public) (Ranked #2)
C. Drafting clear and straightforward contracts and corporate documents
D. Providing practical and clear written advice based on research
E. Drafting clear and cogent written advocacy (affidavits, pleadings, mediation briefs, case settlement briefs, facta) (Ranked #1)
F. Ensuring that, where necessary, documents are translated or made available in formats appropriate to the audience
G. Drafting clear concise memos to file

VIII. Practice Management
A. Managing time and setting priorities (Ranked #1)
B. Docketing
C. Securing a retainer
D. Billing and collecting
E. Trust accounting
F. Using a tickler system (Ranked #3)
G. Opening a file
H. Maintaining an orderly and up-to-date file, including documenting actions taken on a file (Ranked #2)
I. Closing a file
J. Storing and/or destroying files in an appropriate manner
K. Managing (including recruiting and termination) staff

L. Dealing with insurance and liability issues
M. Developing and using a knowledge management system (precedents, databases etc.)
N. Dealing with client complaints (over billing or other issues) including those made in the media and to LSUC
O. Dealing effectively with the stresses and pressures of the practice of law