

THE BEST AND THE BRIGHTEST?: CANADIAN LAW SCHOOL ADMISSIONS[©]

BY DAWNA TONG* AND W. WESLEY PUE**

This article assesses the admissions policies commonly employed by law faculties in common law Canada. These faculties rely heavily on admissions criteria and policies developed in the United States and, like their American counterparts, typically admit students on the basis of "index scores" produced by combining Law School Admissions Test (LSAT) performance with Undergraduate Grade Point Average (UGPA). The appropriateness of this American model to the Canadian context has never been rigorously assessed. This raises serious questions as to whether Canadian law school admissions policies serve *either* of their stated goals of finding the "best" students *or* of advancing social equity. The authors summarize available data and identify a number of problems that flow from reliance on index scores as the primary basis for admissions decisions. Particular problems addressed include the inadequacy of the methods used to identify *either* good students *or* good lawyers, the trickle-on consequences for law school pedagogy and evaluation, and wider consequences for distributive justice. In light of the immense impact of law school admissions decisions on individual career choice, the composition of the legal profession, and Canadian social mobility patterns, the authors call for a re-evaluation of the assumptions and practices of law school admissions.

Cet article évalue les politiques d'admission communément utilisées par les facultés de common law au Canada. Ces facultés de droit se fient sur des politiques et critères d'admission développés aux États-Unis et, comme leurs facultés homologues américaines, acceptent les étudiants sur la base d'un score calculé en combinant le résultat au test d'aptitude pour l'étude du droit (LSAT) et la moyenne cumulative obtenue aux études du premier cycle. La justesse du modèle américain dans le contexte canadien n'a jamais été évalué de façon rigoureuse. Ceci soulève de sérieuses questions à savoir si les politiques d'admission aux facultés de droit canadiennes accomplissent l'un ou l'autre de leurs objectifs: soit celui de trouver les "meilleurs" étudiants, ou de promouvoir l'équité sociale. Les auteurs résumant des données existantes et identifient de nombreux problèmes qui découlent de cette dépendance sur de tels scores comme source primaire des décisions d'admission. L'insuffisance des méthodes utilisées pour identifier soit de bons étudiants ou de bons avocats, les conséquences qu'une telle méthode peut avoir dans le contexte de la pédagogie et de l'évaluation de l'éducation juridique, ainsi que les conséquences pour la justice distributive de façon générale sont des problèmes qui sont abordés de façon particulière par les auteurs. Comme la décision d'être admis ou non à une faculté de droit peut avoir un impact énorme sur le choix individuel de carrière, la composition de la profession juridique et les tendances de mobilité sociale au Canada, les auteurs revendiquent une réévaluation des suppositions et pratiques utilisées lors des admissions aux écoles de droit.

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I. INTRODUCTION: A LAW SCHOOL OPEN TO ALL THE TALENTS

Most Canadians would agree that a law school should “be open ... to all the talents, open to all the views”¹ It is this principle that ensured that Canada’s first modern law faculty welcomed students of ability without explicit barriers regarding class, ethnicity, or gender when it opened its doors in 1945—a time when class, race, and gender commonly defined identity and career options alike.²

The goal of selecting and promoting the best and the brightest seems worthy, particularly in contrast to the explicitly discriminatory policies of the not-so-distant past. Attaining this seemingly simple goal has, however, proved to be a complex matter.

¹ Interview with Founding Dean, University of British Columbia Law Faculty, G. Curtis (17 January 1995).

² *Ibid.*

For the better part of fifty years, the composition of the legal profession in common law Canada has largely been determined by the decisions of admissions committees at university law faculties. Their decisions, made in private, rarely studied, and never subjected to sustained critical enquiry, have immense importance for law schools, for the legal profession, and also for society at large. Students admitted to law school rarely fail. As a result, the composition of Canada's legal profession is determined first, and most significantly, by the decisions of law school admissions committees.³

This matters for several reasons. First, despite ongoing transformations, trials, and tribulations, the legal profession remains privileged.⁴ Call to the bar certifies "middle class respectability." The law still provides a reasonable (often very good) income for most law graduates most of the time.⁵ Law school admissions decisions clearly have a profound effect on the life opportunities of individuals. The cumulative result of admissions decisions modestly affects overall

³ This is despite a surprisingly high rate of "drop-out" from the profession, particularly among women and members of visible minorities: see J. Brockman, *Encountering Barriers and/or Moving On: A Survey of Former Members of the Law Society of British Columbia* (Vancouver: Law Society of British Columbia, 1991) [hereinafter *Encountering Barriers*]; J. Brockman, *Identifying the Issues: A Survey of Active Members of the Law Society of Alberta* (Edmonton: Law Society of Alberta, 1992) [hereinafter *Identifying the Issues*]; J. Brockman, *Leaving the Practice of Law: A Survey of Non-Practising Members of the Law Society of Alberta* (Edmonton: Law Society of Alberta, 1992) [hereinafter *Leaving the Practice of Law*]; F.M. Kay, *Transitions in the Ontario Legal Profession: A Survey of Lawyers Called to the Bar Between 1975 and 1990* (Toronto: Law Society of Upper Canada, 1991) [hereinafter *Transitions in the Ontario Legal Profession*]; F.M. Kay, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession* (Toronto: Law Society of Upper Canada, 1996) [hereinafter *Barriers and Opportunities*]; J. Hagan & F.M. Kay, *Gender in Practice: A Study of Lawyers' Lives* (New York: Oxford University Press, 1995); C. Menkel-Meadow, "Feminization of the Legal Profession: The Comparative Sociology of Women Lawyers" in R.L. Abel & P.S. Lewis, eds., *Lawyers in Society: Comparative Theories* (Berkeley: University of California Press, 1989) 196; and Canadian Bar Association, *Touchstones for Change: Equality, Diversity and Accountability: Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession* (Ottawa: Canadian Bar Association, 1993) (Chair: B. Wilson) [hereinafter *Touchstones for Change*]. See also J. Brockman & D.E. Chunn, eds., *Investigating Gender Bias: Law, Courts and the Legal Profession* (Toronto: Thompson Educational, 1993) (research of gender bias in the profession); and M. Thornton, *Dissonance and Distrust: Women in the Legal Profession* (Melbourne: Oxford University Press, 1996) (experiences of women in the legal profession in Australia).

⁴ See H.W. Arthurs, "Lawyering in Canada in the 21st Century" (1996) 15 Windsor Y.B. Access Just. 202 [hereinafter "Lawyering in Canada"]; and H.W. Arthurs "The Political Economy of Canadian Legal Education" (1998) 25 J. L. & Soc. 14 [hereinafter "Canadian Legal Education"].

⁵ See, for example, D.A.A. Stager & H.W. Arthurs, *Lawyers in Canada* (Toronto: University of Toronto Press, 1990); and D.A.A. Stager & D.K. Foot, *Lawyers' Earnings Under Market Differentiation and Rapid Supply Expansion, 1970-1980* (Toronto: University of Toronto, Department of Economics, 1987).

patterns of social mobility (or rigidity of class structure and hierarchy) in Canada.

More importantly, however, the constitution of the legal profession impacts on public discourse, public policy, and law. “The law,” one distinguished scholar observed nearly a century ago, is nothing more than what “the consensus of legal opinion in the community believes it to be, first the judges, next the lawyers, and finally the mass of intelligent laymen who direct the organized activities of the state.”⁶ Lawyers are the most privileged speakers of legal discourse. Their innumerable local choices affect what rights are asserted in which fora, how rights-claims are translated into the “normative language of state,”⁷ which claims are pursued in litigation and, ultimately, how judge-made law develops.⁸

Lawyers also play crucial roles as “lobbyists.” In this capacity, they perform just off centre stage in policy formation at all levels—from school boards through municipal councils to parliamentary committees and in the legislature itself. Here too, it matters profoundly who lawyers are, what values they hold, how they understand—from their own background, identity, and social location—the circumstances individuals confront, and how they choose to refract issues and concerns into public discourse. The cumulative effect of lawyerly interventions in public life in this way is immense. For such reasons, amongst others, the public interest requires a legal profession that is both “competent” and “diverse.” A profession consisting entirely of extremely “competent,” hard-working, selfless, and ethical individuals who were all, nonetheless, exclusively drawn from a narrow social group would not be well placed

⁶ I.A. MacKay, “The Education of a Lawyer” (Address, Third Annual Meeting of the Law Society of Alberta, December 1913), reproduced in (1940-1942) *Alta. L. Q.* 103 at 108.

⁷ See M. Cain, “The General Practice Lawyer and the Client: Towards a Radical Conception” (1979) 7 *Int'l J. Soc. & L.* 331, where she describes lawyers, at 335, as “conceptive ideologists who think, and therefore constitute the form of, the emergent relations of capitalist society.” Cain sees lawyers as “both agents of the bourgeoisie and translators” and “creators of the language into which they translate”: *ibid.* See also M. Cain, “The Symbol Traders” in M. Cain & C.B. Harrington, eds., *Lawyers in a Postmodern World: Translation and Transgression* (Buckingham, U.K.: Open University Press, 1994) 15; M.S. Larson, “Depoliticization and Lawyers’ Functions: Reflections for a Comparative Analysis” (1986) 24 *Osgoode Hall L.J.* 743; and M.S. Larson, “The Changing Functions of Lawyers in the Liberal State: Reflections for Comparative Analysis” in Abel & Lewis, eds., *supra* note 3, 427.

⁸ For discussions of the ways in which personal identity intersects with lawyerly functions, see W.W. Pue, “Lawyering for a Fragmented World: Professionalism After God” (1998) 5 *Int'l J. L. Prof.* 125; and S. Goldman & A. Sarat, eds., *American Court Systems: Readings in Judicial Process and Behaviours* (San Francisco: W.H. Freeman, 1978).

to serve the public interest.⁹ It could understand nothing beyond its own narrow sectoral interests. The foundation of liberal democracy lies not in the denial of diversity but in finding creative ways of negotiating difference so as to make life-in-common possible, tolerable, and just.

II. OVERVIEW OF CANADIAN LAW SCHOOL ADMISSIONS POLICIES¹⁰

Well aware of these sorts of considerations, Canadian law schools have long laboured mightily to ensure that admissions do not degenerate into reliance on “old boy” referrals, “know-who” admissions, or other forms of “small c” corruption. Generally, the policies currently in place and the spirit motivating them are directed towards translating the desire to be open “to all the talents” into reality. The primary method relied upon in pursuit of this goal has, for historical reasons, been the development of an all-but-exclusive reliance on “objective” admissions criteria. Recognizing that “one size” does not fit all, however, law faculties commonly run three admissions categories simultaneously.

⁹ Thornton, *supra* note 3 at 2, refers to the “benchmark man” in the legal profession as the normative standard to which others are compared. According to Thornton, he is “White, heterosexual, able-bodied, politically conservative, and middle class.” For discussions relating to identity and lawyering in the public interest, see the articles collected in (1998) 5 Int'l J. L. Prof. See also S. Harding, ed., *Feminism and Methodology: Social Science Issue* (Bloomington, Ind.: Indiana University Press, 1987) (arguing that there is a uniquely “feminist” standpoint on many issues). Critical race theory challenges the law and legal language for speaking in one “universal” or monolithic voice that falsely presents itself as objective and neutral.

The organized legal professions of Canada have dedicated considerable time, effort, and money to studying barriers to access to the profession: see, for example, Canadian Bar Association, *The Challenge of Racial Equality: Putting Principles into Practice* (Ottawa: Canadian Bar Association, 1999) (Co-chairs: J. St. Lewis & B. Trevino) [hereinafter *Challenge of Racial Equality*]; Canadian Bar Association, *Virtual Justice: Systemic Racism and the Canadian Legal Profession* (Ottawa: Canadian Bar Association, 1999) (Co-chairs: J. St. Lewis & B. Trevino) [hereinafter *Virtual Justice*]; Law Society of British Columbia, *Summary of the Discussion of the Aboriginal Law Graduates Focus Groups* (Vancouver: Law Society of British Columbia, 1998) [hereinafter *Aboriginal Law Graduates Focus Groups*]; Law Society of British Columbia, *Report on the Survey of Aboriginal Law Graduates in British Columbia* (Vancouver: Law Society of British Columbia, 1996) [hereinafter *Report on the Survey of Aboriginal Law Graduates in British Columbia*]; *Touchstones for Change* *supra* note 3; Canada, Department of Justice, *Survey of Students at Ten Law Schools in Canada* by C. Meredith & C. Paquette (Ottawa: Research and Development Directorate, 1992); and Law Society of Upper Canada, *Survey of Black Law Students, Black Articling Students, and Recently Called Black Lawyers* by A.E. Spears (Toronto: Law Society of Upper Canada, 1992) [hereinafter *Survey of Black Law Students*].

¹⁰ Because education in the civil law is distinctive, we confine our remarks to admissions policies at common law faculties in Canada.

At most faculties, a “regular” category prevails and the majority of admissions decisions are made strictly on the basis of statistical manipulations of “objective” data. Almost all students admitted in this way will have completed a bachelor’s level degree and all are required to take the United States Law School Admissions Council’s standardized test, the Law School Admissions Test (LSAT).¹¹ Students are typically ranked on some form of a combined Undergraduate Grade Point Average (UGPA)/LSAT score. The University of British Columbia Calendar statement regarding admissions to the LL.B. program is representative:

To be eligible for consideration in the Regular category an applicant must:

- have obtained an undergraduate degree in an approved course of studies from an approved university; or
- have completed three years (90 credits) in an approved course of studies leading to an undergraduate degree at an approved university; or
- have completed two years (60 credits) in an approved course of studies leading to an undergraduate degree at an approved university and, at the time of application, be enrolled in the third year of studies of a degree program, so that 90 credit hours will be completed by June.¹²

For applicants in the Regular category at the University of British Columbia, admission depends on the index number obtained by combining the applicant’s academic average and LSAT score, weighting each equally (50 per cent GPA and 50 per cent LSAT).¹³ In calculating the academic average, the Faculty uses all undergraduate courses taken for credit prior to the applicant’s first undergraduate degree that are completed in the previous academic year. The academic average of applicants who, at the time of application, are still completing their last year of studies will be calculated to ensure maintenance of the average achieved over the first two years of study.

All disciplines are given equal weight, but grades obtained in performance courses may be excluded from the calculation of the academic average. Similarly, in special circumstances, applicants may request exclusion of particular grades or an LSAT score from

¹¹ Less than 10 per cent of first-year LL.B. students at the University of British Columbia, for example, are admitted without degrees in hand.

¹² University of British Columbia, *Faculty of Law Calendar, 1998-2000* (Vancouver: University of British Columbia, 1998) at 58 [hereinafter *UBC Faculty of Law Calendar*].

¹³ Further information on the LSAT is available: see online: The Law School Admission Council <<http://www.lsac.org>> (date accessed: 26 February 2000).

computation. Special circumstances consist of medical or compassionate grounds of a temporary nature.

In 1996-1997, the median applicant in the Regular category had an academic average of approximately 79 per cent and an LSAT score of 161 (83rd percentile).

Though it would be too crude to suggest that numbers fed into a computer spit out admissions decisions uninterrupted by human thought, the image captures an aspect of reality just as caricature suggests portrait. While Canadian law faculties tend not to favour graduates of one university or one particular undergraduate program over another, a 1996 study revealed that one Canadian law school prefers applicants who had attended a “major” Canadian university (UGPAS from these universities were valued more highly than from other “less prestigious” universities) and who had taken undergraduate programs thought to be rigorous (engineering preferred over education, for example).¹⁴ Some law schools are rumoured to target recruitment efforts on elite private high schools (*i.e.*, targeting students three to four years before they are even eligible to apply to law faculties), but such selective recruiting efforts, if they exist, are not part of formal admissions policy.

In addition to a regular admissions category, most law schools have some form of “special access” and “First Nations” categories. In such “alternate” streams, admission is determined by UGPA and LSAT, combined with some consideration of non-numerical criteria, such as work experience, community involvement, family circumstances, membership in a group under-represented in the legal profession, and so forth. The range of relevant criteria that schools or admissions committees might wish to consider from year to year is potentially limitless. Applicants are typically asked to self-declare the category they wish to be considered under and to provide evidence that they “fit.” The purpose of these “alternate” streams is to seek out “excellence” in cases where it is obscured by so-called objective criteria. Law school gossip—especially amongst students—sometimes uncharitably presents these categories as the preserve of a motley crew of the unfit: a back door open to the “unqualified underprivileged” and “burnt-out police officers.” Though no reliable data exists about decisionmaking in these categories, the temptation for admissions committees to view them as imperfect images of the “regular” stream is strong. Special admissions

¹⁴ See D. Tong, *Gatekeeping in Canadian Law Schools: A History of Exclusion, the Rule of “Merit,” and a Challenge to Contemporary Practice* (LL.M. Thesis, University of British Columbia, 1996) at 35-37, 85-87 [unpublished].

processes often focus as much on UGPA and LSAT scores (albeit at lower levels) as is the case in the regular category.¹⁵

A few Canadian law faculties operate outside of the mainstream by extending the logic of alternate admissions streams to their entire admissions process. These faculties engage in extensive review of wide-ranging criteria, including work experience, marital status, cultural background, and community service, amongst other things, for all of their admissions decisions. The expressed intent is always to seek out “qualified” candidates who do not do well by standardized criteria and to increase, not limit, “diversity” within the student body.¹⁶

III. IDENTIFYING THE BEST?

Dawna Tong’s previous study¹⁷ addressed issues relating to special access programs (called “affirmative action” programs south of the border) in existence at Canadian law faculties in the 1990s. One significant problem associated with such admissions streams is the common perception—often shared even by the faculty and staff who administer them—that the programs are in some way illegitimate. Many individuals who establish, revise, and implement admissions policies affecting “special access” students have internalized the view that these policies are a sort of unpleasant, albeit necessary, compromise: impeding rather than enhancing the university law faculty’s true mission of selecting the “best qualified” students for entry to an ancient and learned profession. Alternative admissions streams, in a nutshell, are often thought to erode “quality.”¹⁸

¹⁵ Dawna Tong revealed that in the special access and First Nations admission categories there was still an overwhelming emphasis on traditional criteria such as UGPA and LSAT in admissions decisions at some Canadian law schools; minimum UGPA and LSAT scores were used in these categories: see *ibid.* at 64-70, 78-82. Non-numerical criteria such as work experience, community service, membership in a group under- or unrepresented in the legal profession would only be considered once UGPA and LSAT scores reached very high levels: see *ibid.* at 53-55. At some schools non-numerical criteria were considered in admissions decisions only for a small number of applicants such as “borderline” cases: see *ibid.* at 52-53.

¹⁶ See Tong, *supra* note 14. See also the study of the Windsor Faculty of Law by D. Blonde *et al.*, “The Impact of Law School Admission Criteria: Evaluating the Broad-Based Admission Policy at the University of Windsor Faculty of Law” (1998) 61 Sask. L. Rev. 529.

¹⁷ *Supra* note 14.

¹⁸ It bears emphasis that this perception is quite contrary to the expressed goal of such programs, which explicitly aim to compensate for non-random distortions of both UGPA and LSAT results.

Such views are common outside of the university as well. The recent renunciation of “affirmative action” admissions programs in the United States and the ideology informing it has cross-border effects. In the only published survey of Canadian legal education, *Maclean’s* magazine (“Canada’s National Magazine”) included information on the average UGPA and LSAT scores of students admitted to law schools across the country. From context and presentation the implication was clear: *Maclean’s* was promoting the view that higher scores indicated a higher quality student body, a better institution, and a superior legal education.¹⁹ The assumption that alternative admissions streams are essentially about “racial preferences” and that they are fundamentally incompatible with (rather than integral to) the pursuit of “educational excellence” is widely disseminated in popular media.²⁰

Although Tong’s previous research focused centrally on “alternate” admissions streams, one of its most interesting findings was in relation to the mainstream admissions to Canadian law faculties. In broad terms, it revealed a consensus amongst Canadian legal educators that law school admissions policy should promote three interrelated goals: (1) ensuring that admitted applicants have a reasonable chance of succeeding at law school; (2) selecting students who will contribute positively to Canadian society as lawyers or in other law-related capacities following graduation; and (3) ensuring a non-discriminatory admissions process reflective of Canadian universities’ commitment to advancing “equity.”

This last point is important. The Queen’s Law School calendar, for example, contains a policy statement respecting non-discrimination: “no applicant will be denied admission to any program on the basis of age, ancestry, colour, creed, marital status, place of origin, race or sex.”²¹

¹⁹ See A.D. Johnston, “Judging Canadian Law Schools: An Exclusive Report on the Best and the Worst” *Maclean’s* (6 October 1997) 13. See also L.F. Wightman, “The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions” (1997) 72 N.Y.U. L. Rev. 1. Through an examination of admissions data, graduation rates, and bar passage rates, Wightman sought to examine the consequences that exclusive reliance on numerical criteria would have on law school admissions decisions. She found that this would result in a decline in racial and ethnic minority admissions. Furthermore, when Wightman compared graduation rates and bar passage rates between minority students who would have been accepted to law school and those who would not, Wightman found no significant difference.

²⁰ The quotations are taken from an editorial titled “Affirmatively Wrong” *The National Post* (22 March 1999) A19.

²¹ Queen’s University, *Faculty of Law Calendar, 1996-1997* (Kingston: Queen’s University, 1996) at 13.

The University of British Columbia's law calendar also indicates a commitment to equity and diversity. It states:

The Faculty has a student body which increasingly reflects the geographical and cultural diversity of Canadian society. Up to half the student body is drawn from outside British Columbia and includes representatives from many First Nations communities and from numerous other ethnic and racial minorities. Women and men are roughly equal in number and there is a wide range of age groups.²²

Similarly, the University of Toronto's Law Faculty states that "[t]he law school is enriched and Canadian society is benefited by a diverse student body made up of students from various ethnic, racial and cultural backgrounds, from different regions of Canada, as well as from a range of academic disciplines, careers, and community and extracurricular experiences."²³ The rhetorical commitment to equity is clear. However, the nagging concern that "equity" stands opposed to "quality" is never far from the surface—the comparator of the "regular" admissions category always being near to mind. Curiously, however, given its tremendous power as *the norm against which all else is measured* the "regular admissions" track itself has never been subjected to serious scrutiny of the sort one might expect. Although weighted LSAT/UGPA scores have been *the* foundation of law school admissions policies in common law Canada for three decades, there has never been a review of the adequacy and appropriateness of this "gatekeeping" technique starting from first principles.²⁴ The "mainstream" itself turns out to exist almost entirely as an article of faith, a matter of convenience.

The absence of any such study is surprising. During the course of nearly two decades as a law teacher, one of us has repeatedly heard second-hand accounts of studies of admissions policies conducted at one or another Canadian law faculty (such is the impoverished world of our professional gossip). There is even the odd published article making oblique reference to such studies.²⁵

²² *UBC Faculty of Law Calendar*, *supra* note 12 at 58.

²³ University of Toronto, *Faculty of Law Calendar, 1996-1997* (Toronto: University of Toronto, 1996) at 62.

²⁴ According to Arthur Braid and Cameron Harvey of the University of Manitoba Faculty of Law, the University of Manitoba was the first law school in Canada to include the LSAT score in their admissions criteria in 1968: interview with A. Braid and C. Harvey (2 October 1998).

²⁵ See D. Olsen, *The State Elite* (Toronto: McClelland & Stewart, 1980) at 44, where Olsen refers to a study entitled "Who, What, From Where? A Report on the Average Osgoode Student" *Obiter Dicta* (28 August 1972) 8. This survey, conducted by Martin Levy, asked first-year law students about their personal background, and attitudes and opinions about the legal profession.

It turns out, however, that such work, when done at all, is often undertaken for administrative reasons and under the ambit of admissions committees rather than as “research.” Some important consequences flow from this. First, “administrative reports” are rarely based on the kind of methodological rigour and conceptual clarity that research demands. Second, research is put out to public consideration to be read, interpreted, and evaluated by the scholarly community at large. In striking contrast, the results of internal administrative studies are almost never shared between schools, rarely revealed beyond the originating faculty. Consequently, the administrative reports that have been created over the years have entered popular consciousness (amongst law teachers, at least) without ever having been subjected to critical scrutiny from without the administrative or conceptual “frame” that generated them. They enter the knowledge base of law teachers, law students, and the wider community through gossip networks and second- or third-hand summaries, rather than through formal review and dissemination of results. There are no controls for methodological rigour, no possibility of aggregating data over time or across faculties, and no comparative analyses.

In our first approach to this article, we had hoped to review such studies globally to provide a preliminary critique of the methodology and findings of such on-the-ground research. This, we assume, is a necessary first step in working towards some overall conclusion. Astonishingly, given that so much turns on it, the work that would have grounded an analysis of this sort may have never been undertaken in Canada. If it has been done, it is not now available for critical scrutiny.

Much to our surprise, no Canadian law dean (Windsor and Manitoba apart—see Part V, below) was able to provide us with any internal assessment of admissions policy whatsoever. Two separate mail surveys (conducted on 19 March 1996, and 19 March 1997) did not turn up a single in-house study of admissions policy. The reason is not, as cynics might suspect, a lack of candour or fear of what our research might reveal. Most Canadian law deans in fact expressed their wish to help us with our inquiry and their desire to see just such research done. There have, in fact, been far fewer assessments of law school admissions policy—however informally completed—than rumour had implied. Sadly, some completed studies seem not to have survived the shredders long enough to find a place in either scholarly literature or university archives.

IV. SURVEY OF CANADIAN LAW DEANS

We did take some trouble to ensure that we obtained the best available data from across common law Canada. Our first step was a mail survey sent to all Canadian common law and civil law schools in March 1996. In each case, letters were addressed to the dean of the faculty and there were numerous follow-up contacts by way of letter, phone call, and e-mail in order to ensure that we obtained all available data. This survey requested information regarding any existing internal studies of the regular admissions category, affirmative action, special access, or discretionary admissions policies. We also requested information concerning follow-up studies or reports analyzing the success of support programs for alternative admissions stream students. All common law schools except the Université de Moncton responded.²⁶

Of the sixteen common law faculties (Victoria, British Columbia, Calgary, Alberta, Saskatchewan, Manitoba, Windsor, Western Ontario, York, Toronto, Queen's, Ottawa, McGill, Moncton, New Brunswick, and Dalhousie) only the University of Manitoba and the University of Windsor reported having conducted internal studies assessing the efficacy of their admissions policies. The University of Manitoba's research was undertaken by Barry Browning, then Registrar of the University, drawing on student data from the 1970s. More recently, researchers at the University of Windsor have published the results of a major "quasi-longitudinal study of the Law School admission, education and post-graduation experience."²⁷ The Windsor team is also in the final stages of preparing a report in collaboration with colleagues at four other Canadian law schools.²⁸

For two reasons, it seemed unlikely to us that this could be the sum total of Canadian research on the efficacy of law school admissions policies in the three decades since the University of Manitoba first adopted the LSAT as a central part of its admissions processes. First, a great deal turns on these policies, at least for law faculties and their prospective students. Second, because Canada's universities pride themselves on being committed to rational, not faith-based

²⁶ Canada's civil law schools operate in a significantly different educational and professional environment and only the Université de Laval replied from the civil law side—where our questions were mostly irrelevant.

²⁷ Blonde *et al.*, *supra* note 16 at 536.

²⁸ See *Selecting and Educating Lawyers for a Changing Society: A Comparative Study of Admissions, Law School Environments and Careers of Law Graduates* [forthcoming].

decisionmaking, it seems counter-intuitive to think that major decisions such as these might be unsupported by research and ongoing evaluation. An abundance of caution led us to conduct another full mail survey in 1997. Fearing that our previous inquiries may have been insufficiently clear, we asked law deans now whether their faculties had ever “subjected the existing LL.B. admission standards to systematic study.” More specifically, we asked “whether the use of Grade Point Averages, scores in the Law School Admissions Test, the weighting of each of these, and any other applicable admissions criteria have ever been evaluated against any criteria of effectiveness.” Our letter requested information regarding “in house” empirical or longitudinal studies evaluating the appropriateness of admissions policies in any category. We also asked for any available information regarding the reliability of American data about these matters in Canadian educational contexts.

Our 1997 survey produced responses from all sixteen faculties, but little new information. Thirteen faculties reported that they had not conducted any empirical studies or reviewed the efficacy of their admissions criteria and policies in any systematic way. A few expressed an interest in conducting such research but had not done so. The chair of one faculty admissions committee reported that studies had been done, but that they could not be located.²⁹ Mysteriously, two faculties indicated that some sort of review of admissions policies was underway or recently completed, but declined to share their information with us. Some of our correspondents felt that the usefulness of admissions policies based on combined UGPA/LSAT scores was proved by the low failure rates at Canadian law faculties. One law school reported its not-unreasonable assumption that correlation studies were commonly conducted at Canadian law faculties and that these studies *must have* validated existing admissions criteria. Finally, some correspondents indicated that their own admittedly unsystematic observation and anecdotal evidence confirmed the appropriateness of current admissions criteria.

Many faculties reported their reliance on “correlation studies” conducted by the Law School Admissions Council (LSAC). These studies attempt to assess the relative accuracy of a student’s LSAT score, UGPA, and combined LSAT/UGPA in predicting performance in first-year law. Several Canadian law school deans indicated their confidence in the LSAC studies and their belief that, the question having been addressed

²⁹ The chair of the admissions committee for this faculty reported: “This Faculty has had studies done in ‘effectiveness’ but they have not been done on a regular or a frequent basis. I believe that we searched for them in the files ... and came up empty. That says something about our record keeping, but not our interest in the issue.”

elsewhere, there is no need for individual faculties to independently assess admissions policies.

There are indeed good reasons to trust LSAC's studies. Professionally prepared and statistically sophisticated, no Canadian law faculty could possibly match the resources of LSAC. The efficiencies of scale enjoyed by this major American institution are considerable. The law deans' confidence in LSAC and its researchers is well founded. We are, however, less complacent than the deans in one crucial respect. LSAC's work does not purport to address *all* of the questions Canadian law schools should want to resolve as they think about their admissions processes.

There is a danger of confusing the rigorous social science methods that underlie LSAC's studies with "hard" science. The restricted range and limited focus of LSAC's inquiries is not generally appreciated within the Canadian legal community.³⁰ Nor are the implications that

³⁰ LSAC's own cautions in this regard are insufficiently heeded: see Law School Admission Council, *The 1998-1999 LSAT Registration and Information Book Canadian Edition* (Newtown, Pa.: Law School Admission Council, 1998) at 145, where the council states that:

The LSAT, like any admission test, is not a perfect predictor of law school performance. The predictive power of an admission test is ultimately limited by many factors, such as the complexity of the skills the test is designed to measure, the imperfections in the variable the test tries to predict (*i.e.*, law schools using different measures to assess law school performance), and the unmeasurable factors that can affect students' performances (*i.e.*, motivation, physical and mental health, or work and family responsibilities).

LSAC further advises, at 145, that

a test score should be regarded as a useful but approximate measure of a test taker's abilities as measured by the test, not as an exact determination of his or her standing. LSAC encourages law schools to examine the range of scores within the interval that probably contains the test taker's true score (*e.g.*, the test taker's score band) rather than solely interpret the reported score alone.

A further advisory to law schools appears under the heading "Advice to Law Schools on Use of LSAT Scores." LSAC advises, at 146, that "[w]hile LSAT scores serve a useful purpose in the admission process, they do not measure, nor are they intended to measure, all the elements important to success at individual institutions. LSAT scores must be examined in relation to the total range of information available about a prospective law student." In this context LSAT offers several guidelines to law schools for using LSAT scores. Some of the guidelines include: "Do not use the LSAT score as a sole criterion for admission. Those who set admission policies and criteria should always keep in mind the fact that the LSAT does not measure every discipline-related skill necessary for academic work, nor does it measure other factors important to academic success": *ibid.* Another LSAC guideline states: "Do not use LSAT scores without an understanding of the limitations of such tests. Admission officers and members of admission committees should be knowledgeable about tests and test data and should recognize test limitations": *ibid.* Deans of law schools have also criticized the use of LSAT scores in admissions decisions. In P.J. Liacouras, *Toward a Fair and Sensible Policy for Professional School Admission* (Denver: Education Commission of the States, 1978) the author, the former dean of Temple Law School, argued that the LSAT failed to measure or identify characteristics such as "common sense, self-discipline, motivation, judgement, practicality, idealism, tenacity, fidelity, character and maturity, integrity, patience, preparation, the ability to listen,

flow from the *assumptions* on which LSAC's research rests. Moreover, no Canadian law faculty has yet given serious consideration to the possibility that Canada's unique social, cultural, geographical, and educational environments might render large-scale aggregate "National" correlation studies (conducted almost exclusively on the basis of American data) less than fully reliable.

In short, it exaggerates only slightly to say that the faculties that offer a post-graduate degree, serving as the exclusive gateway to one of Canada's most influential, wealthy, and powerful professions, have been content to employ admissions policies untested by any systematic, rigorous assessment whatsoever. Two "common sense" beliefs—that conventional admissions procedures must be good (otherwise they would not exist) and that American studies provide reasonable guidance for Canada—are the motor driving law school admissions. The result is that admissions policies in the regular category rest on a witches' brew of memory, anecdote, and dimly recalled old reports that may or may not have been rigorously conducted. Browning's study at the University of Manitoba, the most thorough to date, was completed in 1977—when very different pedagogical, demographic, economic, professional, and cultural environments prevailed.³¹

V. REVIEW OF MAJOR STUDIES

Given the strong reliance placed on LSAC correlation studies, we asked Canadian law schools for permission to review any studies of their own admissions policies conducted by LSAC on their behalf during the last five years. Ten common law schools reported that they had commissioned LSAC correlation studies. Several provided us with copies.³²

perseverance, client-handling skills, creativity, courage, personality, oral skills, organizational ability and leadership": *ibid.* at 19. He proposed a more "humanistic" approach to admissions that moved away from numbers-oriented indices.

³¹ Some of the transformations in Canadian legal education during the past two decades are traced out in *Transitions in the Ontario Legal Profession* *supra* note 3; and in F.M. Kay, N. Dautovich & C. Marlor, *Barriers and Opportunities Within Law: Women in a Changing Legal Profession* (Toronto: Law Society of Upper Canada, 1996). Some of these transformations in Canadian legal education were indicated or anticipated in Consultative Group on Research and Education in Law, *Law and Learning* (Ottawa: Social Sciences and Humanities Research Council of Canada, 1983) [hereinafter *Law and Learning*]. See also "Lawyering in Canada," *supra* note 4; and "Canadian Legal Education," *supra* note 4.

³² Five faculties reported that they had not commissioned any such LSAC studies during the preceding five-year period. One law school did not confirm whether or not such studies had been commissioned on its behalf.

LSAC also provided us with their own studies of aggregate data. One report provides a three-year summary of LSAT correlation studies of American law schools with a few Canadian schools folded into the mix.³³ The tremendous reliance placed on LSAC's "National" (a misnomer) correlations render these documents, without a doubt, the most important policy documents affecting Canadian legal education today. Few law teachers or administrators, however, are intimately familiar with these studies. Most have probably never seen an LSAC correlation study, only a tiny handful will ever have read one, and few will have given serious consideration to anything beyond the raw "correlation" figures produced as an end-product. The method and assumptions underlying LSAC's correlation studies bear emphasis. Important policy issues lay obscured between LSAC's stated assumptions, our common understandings with respect to statistical method, and the raw correlations upon which faculties in fact rely.

LSAC's most recent National Summary Report summarizes LSAT correlation studies conducted in 1990, 1991, and 1992 at 162 law schools.³⁴ Most, but not all, of the law schools built into this study were in the United States (the absolute interchangeability of Canada and the United States is, seemingly, simply assumed). LSAC's correlation studies aim to assess the extent to which LSAT scores and UGPA are useful in predicting success in the first year of law school (first-year "success" is itself understood exclusively in terms of grade performance). A linear regression analysis is employed to assess the degree of correlation.³⁵ Two key findings emerge. First, reliance on combined UGPA and LSAT provides a predictor that is "superior" to either alone. Moreover, "the average multiple correlation between first-year grades in law school and the combined predictors of LSAT and UGPA of .49 is higher than has ever been reported previously." Second, the report confirms that LSAT scores taken alone are a better predictor of first-year average than UGPA

³³ See L.F. Wightman, *Predictive Validity of the LSAT: A National Summary of the 1990-1992 Correlation Studies* (Newtown, Pa: Law School Admission Council, 1993) at 23 [hereinafter *Predictive Validity of the LSAT*]. A more recent National Summary Report summarizing LSAT correlation studies for the 1995-1996 year was published in August 1999 after this article had been accepted for publication. It is much to the same effect as the previous "National" Correlation studies and its findings do not affect the arguments made in this article.

³⁴ The statistical meaning of "correlation" is precise and limited: "correlation measures the linear relationship between two variables. It ranges from 1 for a perfect positive relationship to -1 for a perfect negative correlation": Law School Admission Council, *LSAT Correlation Study Report* Summary of Results at 12.

³⁵ The regression analysis "employs [first-year average] as the criterion variable, LSAT and UGPA as the predictor variables": *ibid.* at 17.

alone.³⁶ Its major conclusion is that the LSAT remains as valid a predictor of first-year performance as it was shown to be in a major study conducted in 1982, and that the relative importance of LSAT and UGPA is unchanged since that time.³⁷

In all its self-studies, methodological overviews, and public information, LSAC is quite clear that the admissions test it administers is itself tested almost exclusively by reference to academic success (a narrower criterion than professional success). This, in turn, is measured solely by performance in first-year law (a narrower criterion than academic success). LSAC asserts neither that first-year teaching practices are particularly good, nor that first-year performance is a strong indicator of good lawyering abilities. Rather, its exclusive reliance on this seemingly unusual criterion is justified on pragmatic grounds. LSAC presumes that first-year curriculum is substantially the same for all students and across all law faculties and that establishing correlations exclusively with first-year performance provides a partial control for differences in course difficulty and grading stringency. Moreover, a certain efficiency attaches to seeking correlations with first-year data, rather than waiting for second- or third-year averages to become available.

The one major Canadian study examining the effectiveness of law school admissions criteria is that conducted by Barry Browning in 1977 (the “Manitoba study”).³⁸ Following the pattern set in the United States, Browning’s primary point of reference in evaluating effectiveness of admissions criteria was first-year averages. His methodologically sophisticated and far-reaching study used data available at the University of Manitoba to investigate the relative utility of existing and conceivable law school admissions criteria. It concluded that Canadian UGPAs provide a “solid indicator of law school success.”³⁹ Significantly, Browning found that the correlation value between LSAT and first-year

³⁶ The national summary data reveals that the “median validity for LSAT alone is .41, compared with .26 for UGPA alone”: *Predictive Validity of the LSAT*, *supra* note 33 at 23.

³⁷ *Ibid.* at 24.

³⁸ See B. Browning, “A Walk Through the Black Forest or a Study of Criteria Effectively Available for the Selection of Students to Faculties of Law” in R.J. Matas & D.J. McCawley, eds., *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education* (Montreal: Federation of Law Societies of Canada, 1987) 608.

³⁹ *Ibid.* at 615.

performance in Manitoba ranged between .26 and .47.⁴⁰ His examination of data taken from student files over an unspecified period revealed that an “index score” combining UGPA and LSAT provided a more reliable predictor than either UGPA or LSAT alone. The index score was the strongest predictor of any tested for, with a statistical accuracy of 83 per cent for all students (86 per cent in the “regular” category) in predicting grade performance, albeit within wide grade-spread parameters.

The Manitoba study is especially valuable because it sought out correlations not only with the routine criteria of law school admissions, but also with a number of “social” or “biographical” traits that might plausibly impact on a student’s performance. Correlations were run with age, sex, work experience, university attended, faculty of pre-law studies, length of education, highest degree held, major/minor fields of study, and high school averages. Assessed separately, none of these factors matched either the strong predictive values of an UGPA/LSAT index score, or even that of UGPA or LSAT considered separately. When they were appropriately incorporated into a multiple regression analysis such traits increased predictive accuracy by approximately 1 per cent. Browning considered this improvement “minimal”⁴¹ and not worth the cost that would be involved if reference to such factors were routinely built into the admissions process. Only high school average proved to be a strong predictor of first-year success, ranking after UGPA and LSAT in predictive utility.⁴² Unfortunately, the precise correlation between high school average and first-year average was not reported.

Although Browning failed to find useful positive correlations in “biographical” criteria, he identified some negative ones. Though not reported in this way, Browning’s findings in this respect might be construed as a telling indictment of adult education in Canadian law faculties: negative correlations were found with age, work experience,

⁴⁰ The American comparison is interesting in that the Manitoba results over the period of Browning’s study cover a range of correlations that spans the highest and lowest quartiles of American law schools. In W.B. Schrader, *Summary of Law School Validity Studies, 1948-1975* (Newtown, Pa: Law School Admission Council, 1977) at 530, Schrader reports LSAT/first-year average correlations in 1971-1974 (a period mid-point in the Manitoba study) of .44 in the 75th percentile and .29 in the 25th percentile. See, for example, F.R. Evans, *Recent Trends in Law School Validity Studies*(Newtown, Pa: Law School Admission Council, 1982).

⁴¹ Browning, *supra* note 38 at 620.

⁴² According to Browning, gender and pre-law university attended showed no statistical difference in first-year performance. Furthermore, faculty of pre-law studies showed no significant statistical difference in first-year performance. Browning excluded consideration of correlations with major/minor fields of study because there was an insufficient sample size. Class rank was found to be a useful device to resolve differences arising from divergent grading practices in different departments and universities.

length of education (unbroken length of studies), and highest degree held. Crudely, older students did less well than younger ones, students who applied “with the minimum academic qualifications required seem to perform the best.”⁴³ These troubling findings imply that the most immature, least educated, least experienced students do best at law school even though—one presumes—they are least able to assume the responsibilities of a lawyer.

Finally, the Manitoba study concluded that letters of reference, interviews, and the like cannot be reliably built into law school admissions processes because there are no effective controls for interviewer bias or dishonesty by referees or candidates.⁴⁴

Browning understood his findings to be tentative and urged further research to build on it. Unfortunately, his plea has gone unanswered. Recent writings on legal education have not included any formal follow-up to his twenty-year-old study.⁴⁵ This is doubly

⁴³ Browning, *supra* note 38 at 620, 623.

⁴⁴ Browning’s account of cases in which, for example, a man wrote a reference letter for his own daughter, and a female interviewer believed only male candidates were suitable for medical school, serves as a useful reminder of the problems potentially associated with “subjective” admissions criteria. One of the authors of this article knows of a case in which a law school hopeful established a “charity” in order to make himself the chief executive officer only in the hope of impressing law school admissions officials with his managerial abilities and social conscience! More subtly, psychological and business literature points to a variety of ways in which predictable human biases intrude on “subjective” appraisals of individual merit, reminding us of the need for caution in re-designing admissions policies: see, for example, N. Foster *et al.*, “Gender in Mock Hiring Decisions” (1996) 79 *Psychol. Rep.* 275 (revealing strong gender bias by both male and female interviewers in favour of their own gender); K.M. Neckerman & J. Kirschenman, “Hiring Strategies, Racial Bias, and Inner-City Workers” (1991) 38 *Soc. Probs.* 433 (revealing race and class biases in recruitment strategies and employment interviews including a finding, at 435, that race was “significantly associated with interviewer ratings of nonverbal cues such as facial expression, posture, and certain aspects of voice that are known to influence employers”); and A.J. Kinicki & C.A. Lockwood, “The Interview Process: An Examination of Factors Recruiters Use in Evaluating Job Applicants” (1985) 26 *Vocational Behav.* 117 at 123-25 (reporting employers’ heavy reliance on “subjective and impressionistic” factors rather than “objective and concrete” information in making hiring decisions). For a useful summary of research in this area, see S.J. Cesare, “Subjective Judgment and the Selection Interview: A Methodological Review” (1996) 25 *Pub. Personnel Mgmt.* 291.

⁴⁵ See T. Alvi *et al.*, “Equality in Legal Education: Sharing a Vision, Creating the Pathways” (1992) 17 *Queen’s L.J.* 174; Blonde *et al.*, *supra* note 16; J.E.C. Brierley “Legal Education in Canada” (1993) 72 *Or. L. Rev.* 977; B. Feldthusen, “Affirmative Action: Taking Equality Seriously” (1988) 8 *Windsor Y.B. Access Just.* 292; H. MacAulay, “Improving Access to Legal Education for Native People in Canada: Dalhousie Law School’s I.B.M. Program in Context” (1991) 14 *Dal. L.J.* 133; R.J. Matas & D.J. McCawley, eds., *Legal Education in Canada* (Montreal: Federation of Law Societies of Canada, 1987); B.M. Mazer, “Access to Legal Education and the Profession in Canada” in R. Dhavan, N. Kibble & W. Twining, eds., *Access to Legal Education and the Legal Profession* (London: Butterworths, 1989) 114; P.A. Monture, “Now that the Door is Open: First Nations and the Law School Experience” (1990) 15 *Queen’s L.J.* 179; W.W. Pue, *Law School: The Story of Legal*

unfortunate, for the passage of time matters immensely here. The conclusions of a study that relied on data generated in the 1970s cannot be assumed to apply to the very different law school environments at the beginning of the century. Changes in curriculum, teaching methods, and student demographics, combined with profound transformations in both the legal profession and the Canadian economy over the past quarter century might all reasonably be expected to impact significantly on both the pool of law-school applicants⁴⁶ and the nature of their educational experience once they get there.⁴⁷

Education in British Columbia (Vancouver: University of British Columbia Faculty of Law, 1995); and D.J. Purich, "Affirmative Action in Canadian Law Schools: The Native Student in Law School" (1986) 51 Sask. L. Rev. 79.

⁴⁶ See, for example, *Law and Learning*, *supra* note 31; and H.W. Arthurs & R. Kreklewich, "Law, Legal Institutions, and the Legal Profession in the New Economy" (1996) 34 Osgoode Hall L.J. 1. For a discussion on changing demographics in law school and the profession, see Alvi *et al.*, *supra* note 45; *Challenge of Racial Equality* *supra* note 9; *Virtual Justice* *supra* note 9, Abel & Lewis, eds., *supra* note 3; R.L. Abel, *American Lawyers* (New York: Oxford University Press, 1989); Brockman & Chunn, eds., *supra* note 3; Menkel-Meadow, *supra* note 3; and Hagan & Kay, *supra* note 3. According to *Touchstones for Change* *supra* note 3 at 2, "women comprise over 25% of all faculty in Canadian law schools." However, the report notes that minority men and women are still under-represented, and few women can rely on the same opportunity for advancement as their male counterparts. The participation of women in legal education has changed markedly since the 1970s. According to Blonde *et al.*, *supra* note 16 at 542, at the University of Windsor Law School, for example, the male/female student ratio has moved from three-to-one (in favour of male students) to an approximate one-to-one balance in recent years. At the University of British Columbia Faculty of Law, during a similar period, the proportion of women students grew from 4 per cent (1970) to 29 per cent (1980), 47 per cent (1990), and 43 per cent (1997): see "Ratio of Male: Female Grads" *The Gryphon* (October 1998) 11. See also Stager & Arthurs, *supra* note 5 at 96-97, which indicates full-time enrollment in LL.B. programs in Canada, by province, from 1920-1988. Table 4.3 at 96 reveals that the proportion of women who attended Canadian law schools during this time increased steadily, reaching 48.3 per cent in 1988.

⁴⁷ There has been surprisingly little research addressing the relationship between the changing composition of law faculty student bodies and either the method of teaching or the curriculum components that would be most helpful to them. What little research there is has tended to focus on student needs in relation to the "Legal Research and Writing" programs that have proliferated in North America during the past two or three decades. See, for example, E.B. Cohen, "Teaching Legal Research to a Diverse Student Body" (1993) 85 L. Libr. J. 583 (arguing, at 583, that the increasing diversity of law students requires a broadening of teaching methods to meet a wider variety of learning styles, especially to take accounts of the peculiar needs of "minority men and women, Euro-American women, and older returning students." Cohen bemoans, at 585, a situation in which

few articles ... discuss improving teaching methods by incorporating an understanding of the different learning styles of students No article addresses differences in learning styles of students in the increasingly diverse student population as a method of improving the teaching of legal research. Yet, the composition of the law student population nationally has changed.

See also D.W. Champagne, "Improving Your Teaching: How Do Students Learn?" (1991) 83 L. Libr. J. 85. In an article valuable for both its empirical foundation and its focus on law school pedagogy, M.F. Fitzgerald, "What's Wrong with Legal Research and Writing? Problems and Solutions" (1996) 88 L. Libr. J. 247, draws attention to several pervasive problems in Canadian legal

Moreover, there are in fact significant variations in curricula from one faculty to another. It is not unthinkable that admissions criteria proven effective at a small law school such as Manitoba's might be entirely unsuited to larger faculties offering more diverse course offerings and more expansive intellectual agendas. We simply do not know. It is possible too that computer technologies and applications developed during the past two decades might permit a much more full and complete search for "social" or "biographical" correlations, positive or negative, than was possible in the 1970s. Again, we do not know.

No such work has been done (we leave aside the Windsor study⁴⁸ that focused on a law faculty whose admissions policies lay outside of the Canadian mainstream). In an effort to update Browning's findings we reviewed the results of as many LSAC correlation studies of individual Canadian law faculties as we were able to obtain. Of Canada's sixteen common law faculties, five had not commissioned LSAC correlation studies, one would not reveal whether it had or not, and four refused to share their data with us.⁴⁹ Table 1, below, summarizes the six sets of correlation studies available to us.

These correlation analyses are inconclusive even with respect to the narrow issue of assessing the relative utility of UGPA and LSAT in predicting first-year grade performance. In some cases, the correlations are astonishingly weak; others provide modest evidence corroborating Browning's conclusions. These figures suggest that Canadian UGPAs may be a somewhat better indicator of success in first-year law than seems to be the case in the United States, where, of course, the LSAT is developed and managed specifically to solve the problem of widely varying standards of undergraduate education. It needs to be recalled in this context too that even a "strong" correlation of .50 would mean that only 50 per cent of the variation is explicable by reference to the predictor variable assessed.

education. Her work, derived from a questionnaire sent to fifteen Canadian law schools in 1993, describes the typical law school curriculum as a "dinosaur" severely out of step with the changing needs of the profession and students. She argues that law teachers fail to appreciate theories about teaching and learning (such as basic learning theory, adult education theory, skills theory, problem-based approaches, and self-learning approaches), that assessment methods fail to test skills students have been taught, and that the case method prevails out of convention rather than demonstrated pedagogical utility.

⁴⁸ See Blonde *et al.*, *supra* note 16.

⁴⁹ It should be observed that the heightened sense of insecurity and fear that pervades Canadian legal education at this time has produced an almost paranoid concern that any information about individual faculties might be construed negatively, might hurt their place in "national rankings," and hence, might damage institutions irreparably.

TABLE 1

LAW SCHOOL	LSAT & FYA	UGPA & FYA	UGPA & LSAT
LAW SCHOOL A			
Study 1 – Full-time only, Regular Admission	0.212	0.256	-0.057
Study 2 – Full-time only, Special Admission	0.491	0.139	-0.02
Study 3 – Full-time students only	0.572	0.478	0.409
Study 4 – Full-time only, Regular and Special Admission	0.444	0.387	0.262
LAW SCHOOL B			
Full-time only	0.306	0.316	0.220
LAW SCHOOL C			
Full-time only	0.513	0.378	0.202
LAW SCHOOL D			
Study 1 – Full-time only	0.467	0.367	0.263
Study 2 – Full-time only	0.465	0.395	0.209
LAW SCHOOL E			
Full-time only	0.253	0.184	-0.193
LAW SCHOOL F			
Study 1 – Full-time only, Regular Admission	0.169	0.121	-0.494
Study 2 – Full-time only, Regular Admission	0.154	0.211	-0.432

FYA = First Year Average (average in first year of law school)

UGPA = Undergraduate Grade Point Average

LSAT = Law School Admissions Test Score

Moreover, a strong correlation may not be a good thing. What are we to make of law school F's extremely low correlations, for example? A very weak correlation might indicate a school with either very poor admissions policies (unable to detect talent) or very good ones (identifying good students whose index scores are not an accurate measure of their ability). It might indicate either terrible teaching and examination methods (where good students do not attain their potential) or outstanding teaching (where low index-score students are helped to achieve their full potential). Correlation scores tell us remarkably little about either average student ability or quality of education.

VI. SOME PROBLEMS WITH LSAT/UGPA AND CORRELATION STUDIES

Where, then, does all this leave us? First, it is reasonably clear that we know far less than we should about the efficacy of Canadian law faculties' admissions policies. There are hints—but in truth no more than that—that admissions criteria derived from American social and educational experience may not be fully applicable in Canada. Canadian evidence pointing towards a meaningful correlation between LSAT or index scores and law school performance is much weaker than one might have expected. But then, there is less evidence of any sort in this field than one would hope for.

There are, in our view, some fundamental problems associated with reliance (particularly unthinking reliance) on LSAT and LSAT-based index scores as a basis for law school admissions that have little to do with the validity of available correlation studies.

A. *Late Bloomers*

The most fundamental objection, perhaps, relates not to the failure of method in existing correlation studies, but rather to their limited ambition. It bears re-emphasis that the only correlations sought by LSAC or Browning were between existing or possible admissions criteria and performance in the first year of law school. Focus on this particular correlation rather than other possible indicators of academic or professional success (upper-year performance, cumulative law school GPA, mooting success, prizes won, professional income, appointments, or honours, amongst others, come to mind) has become the routine method of assessing law school admissions policies.

It is, however, inappropriate for legal educators to permit LSAC's exclusive focus on first-year performance to steer educational policy.⁵⁰ First, admissions policies developed exclusively with reference to first-year success cannot take account of "late bloomers." The first year of law school requires adjustment to a peculiar academic culture (*e.g.*, teaching style, evaluation methods, and "case law" method of thinking) and to the law school's social environment (*e.g.*, "fitting in," proto-professional ethos, intensity of student interactions, density and narrowness of culture). For many students—especially, perhaps, those from non-traditional backgrounds—intellectual ability and professional skills may not be accurately reflected in their first, "settling in," year. In fact, legal education may be experienced as "culture shock." Law schools remain, for the most part, homogeneous environments in terms of student and faculty social class, race, ethnicity, age, and so forth.⁵¹ In the result, if the LSAT score accurately predicts first-year performance, this may be merely an indication that it accurately tests the ability of individuals to take a test that is, after all, rather similar to law school 100 per cent final examinations. It is altogether possible that persons from disadvantaged backgrounds are statistically more likely to do poorly on the LSAT and need more time to adjust to law school than those from relatively advantaged backgrounds.⁵² Neither necessarily indicates intellectual incompetence, lack of legal skills, or future inability to serve well as a lawyer. LSAC's reliance on first-year performance simply does not speak to students' suitability for the profession. It should be a cause for general concern that those persons from non-traditional or

⁵⁰ For the sake of clarity, we wish to emphasize that the following comments are not offered as a criticism of LSAC and its studies, but rather as a caution that they need to be read—as they are written—carefully and with an eye to the consequences flowing from the methodology pursued. As discussed in note 30, *supra*, LSAC is careful and quite clear in stating its assumptions regarding the utility of reliance on first-year averages in its correlation studies. Educators must, however, beware of mistaking methodological assumption for pedagogical edict.

⁵¹ See *Aboriginal Law Graduates Focus Group* *supra* note 9; *Report on the Survey of Aboriginal Law Graduates in British Columbia* *supra* note 9; *Survey of Black Law Students* *supra* note 9; Alvi *et al.*, *supra* note 45; and Monture, *supra* note 45.

⁵² See *Challenge of Racial Equality* *supra* note 9; *Virtual Justice* *supra* note 9; Dhavan, Kibble & Twining, eds., *supra* note 45; J.C. Hathaway, "The Mythical Meritocracy of Law School Admissions" (1984) 34 *Legal Educ.* 86; B. Powell & L. Carr Steelman, "Equity and the LSAT" (1983) 53 *Harv. Educ. Rev.* 32; D.M. White, ed., *Towards a Diversified Legal Profession: An Inquiry into the Law School Admission Test, Grade Inflation, and Current Admissions Policies* (New York: National Conference of Black Lawyers, 1981); W.V. Slack & D. Porter, "Training, Validity and the Issue of Aptitude: A Reply to Jackson" (1980) 50 *Harv. Educ. Rev.* 392; and M.J. Moorhead, "The Impact on Minorities of the Legal Professionalization Process: An Overview" (1979) 22 *Howard L.J.* 463.

disadvantaged backgrounds may be disproportionately “cut out” by admissions policies that are geared towards such a narrow focus.

B. *Uninspired Pedagogy*

Students who are pre-adapted to immediate success in programs as currently constructed are, of course, exactly what educational institutions (and, let it be admitted, the teachers who staff them) want. Undemanding and largely self-educating, such students are a delight to teach. Admissions policies that serve teachers’ convenience so well relieve us of responsibility to think more creatively about such matters as curriculum, pedagogy, and modes of course delivery.

Law faculties are notoriously bad at providing “transition” courses, for example. Vernellia Randall, disturbingly, has offered the global assessment of legal education as “incompetent education.”⁵³ Her views present a searing indictment of prevalent educational practices in North American law faculties. The “one-size-fits-all approach to student learning,” she says, “has historically disadvantaged non-traditional groups.”⁵⁴ Noting that “we admit a student population that is diverse in its learning styles,” Randall argues that legal educators “have an ethical, if not a legal, responsibility to those students right now to today provide them with a pedagogically-sound legal education”⁵⁵ This is not the proper place for an extended discussion of the merits or failings of contemporary approaches to legal education. Certainly, we would not wish to be understood as denying the extraordinary effectiveness, rigour, and excitement about learning conveyed—to some students, at least—by Socratic method and case-based legal education. Nonetheless, Randall’s listing of the pedagogical shortcomings of traditional law school method is telling:

- we teach using one dominant method without regard to its educational effectiveness;
- we do not clearly communicate student-centred learning objectives; that is, we do not tell students what it is they need to know or what they need to be able to do to perform adequately;

⁵³ See V.R. Randall, “Legal Education: Incompetent Education?” online: Students, Learning and Legal Education <<http://www.udayton.edu/~aep/>> (date accessed: 26 February 2000).

⁵⁴ *Ibid.*

⁵⁵ *Ibid.*

- we teach basic legal analytical skills in extremely large classrooms (an oxymoron at best);
- we teach one set of skills (oral analytical skills) and we test another (written analytical skills);
- we provide little opportunity for students to practice the skills we do teach (oral analytical skills);
- we provide no opportunity for students to practice the skills we test (written analytical skills);
- we evaluate students based on only one or two exams a semester;
- we evaluate students using a method (essay exams) that has been documented to lack reliability and validity;
- we assign grades not based on actual criterion-referenced performance (learning objectives), but on norm-referenced performance (performance compared to other students);
- we know little about pedagogy, learning theory, or evaluation and seem singularly reluctant to learn; and
- we do little to help our students to understand how they learn and how to maximize their learning in law school.⁵⁶

Now, not every law school, much less every law teacher is guilty of all of these “sins.” It is possible that American legal education is more deficient in these respects than Canadian legal education or that Randall caricatures, to some extent, legal education in the United States. Nonetheless, this bare-bones listings of pedagogical failure is uncomfortably familiar to Canadian law teachers. We all see our own image, however imperfectly, in the mirror Randall holds up.

LSAC’s correlations give the patina of legitimacy to current educational practices, letting law schools “off the hook” with regard to pedagogical developments that could improve the quality of teaching across the board. Adopting admissions policies that are in effect designed to confirm our late nineteenth-century teaching practices is convenient for law teachers and suspect as educational policy. Where are the courses modelled on “College 101,” aimed at helping students to negotiate the transition to a new educational environment?⁵⁷ First-year

⁵⁶ *Ibid.*

⁵⁷ The “Freshman Seminar” or “College 101” courses offered in many American colleges and universities is one example of a program that focuses on the “Freshman Year Experience” from the point of view of the student. Acknowledging that a student’s freshman year is often a difficult time of transition and adjustment (like first-year law school), “College 101” courses aim to ease the transition by teaching necessary skills and explicitly addressing important topics of concern to first-year students (including academic performance, faculty and student interaction, friendship and romance, community, conflict, family ties, personal identity, and spirituality). For further discussion,

law school, shot-through with hype, massive amounts of reading, large classes, strange vocabularies, an absence of individual tutoring or mentoring, and 100 per cent final exams, can be an intimidating and alienating experience. “Transition” courses would help to make first year less psychologically overwhelming and stressful, a point underlined by University of Windsor alumnae who suggested that the “Law School should provide a special tutoring component to enable natives and poorer minority females to complete legal education.”⁵⁸ This is not simply a “minority” issue, however. The issues relating to introductory curriculum go far beyond modifying a “methods” course, offering remedial education to selected students, or introducing a general course in the character of “Law School 101.”

C. Evaluation Procedures

Teaching and evaluation procedures may need re-evaluation. Like the curriculum itself, our current practices in these respects would be immediately recognizable by our nineteenth-century forebears. Complacency about LSAT correlations allows us to rest in a convenient rut, explaining any deviation as a sop to the unwashed who, in a surfeit of middle-class guilt, we admit but do not fully accept. Some law schools have revamped their evaluation processes. Yale, for example, uses a credit/fail grading scheme for all first-term required courses.⁵⁹ Law schools will need to re-examine and redefine grading standards for first year if they are found to be discriminatory on class, race, ethnicity, region, or gender grounds. Similarly, student promotion standards may need to be modified. A thoughtful reaction to LSAT/UGPA correlation studies may require actual educational reform, not just further tinkering with the weighting formula applied to “objective” admissions criteria. The objective of any such changes should be not to dilute standards, but to improve education for all students and to attain net gains in the quality of law graduates.

see J.D. Lawry, *College 101: A First-Year Reader* (Boston: McGraw-Hill College, 1999); R.T. Farrar, *College 101: Making the Most of Your Freshman Year* (Princeton: Peterson's Guides, 1988); and B. Stuart & K. Stuart, *College 101* (New York: Macmillan, 1993).

⁵⁸ Blonde *et al.*, *supra* note 16 at 545.

⁵⁹ At Yale Law School, the first-year courses are constitutional law, contracts, procedure, and torts. The Faculty's web site states that “for the first term, all grades are credit/fail. After that, grades are honors, pass, low pass, fail, with credit/fail option”: online: Yale Law School <<http://www.yale.edu/lawweb/lawschool/admissions/>> (date accessed: 26 April 2000).

D. *What Do Lawyers Do?*

First-year performance may not be the most accurate test of professional abilities. It would be an odd legal practice that approached professional services in the way first-year law implies—oriented exclusively to appellate litigation, restricted to common law fields entirely unsullied by statute, employing doctrinal analysis and examinable knowledge as the key work skills, with little use for deep thought, sharp human perception, sound judgement, or writing ability! Not surprisingly, many practitioners look back on first-year law (or even all three years of law school) as “irrelevant” to their day-to-day practice and often criticize their legal education for failing to adequately prepare them for their professional work. All told, continued reliance on first-year law average as the sole indicator of academic success and as a predictor of future professional success seems absurd.

E. *Apples and Oranges?*

We should pause to consider LSAC’s stated reason for its exclusive reliance on the first-year average: the assumption that “the first-year grade point average tends to represent basically the same curriculum for all of the students in the school.”⁶⁰ We question this assumption. It presumes that the first-year curriculum—and, by implication, the teaching method and examination method—are uniform not only within a law faculty but also from school to school, and between the United States and Canada (the statement appears in the most recent “national” correlation summary). This seems highly suspect given faculty diversity, regional differences within the United States, and the many social, cultural, political, and legal differences between the United States and Canada, which influence subject matter, approaches to teaching, and instructional method in the first-year law curriculum. To use a well worn phrase much loved by lawyers, LSAC’s methods may seek “national” correlations by trying to compare “apples and oranges.”

It might be more useful for LSAC to define academic success by reference to student averages in the upper years, or the overall three years of law school. The study conducted by the University of Windsor hints that such an approach might be useful. Windsor’s study revealed that “six per cent of the beneficiaries of the broader-based admission

⁶⁰ *Predictive Validity of the SAT*, *supra* note 33 at 3.

policy ... rank among the top ten per cent of graduates”⁶¹ There have been few follow-up studies on other groups (even Wightman⁶² examined only success in bar admission examinations) and there is consequently little evidence of any sort that high LSAT scores correlate with post-graduation success by any criteria.

F. *Whose Correlations?*

There are other questions to be raised about the LSAT correlation studies beyond critiques of this sort. For example, LSAT correlation studies offer no control group or other baseline of comparison. We know something about a group of students *all of whom have done well in LSAT tests*, but this, by definition, cannot tell us anything about applicants who are never admitted to law school, much less about potentially able individuals who do not apply. Even if very high correlations are shown, it is one thing to say that there is a positive correlation with the existing student population, and quite another to assert that there would be a positive correlation if quite different criteria were deployed in the admissions process. LSAC does try to answer this criticism by statistical methods. For all its statistical rigour, however, the attempt amounts to little more than tugging at one’s own bootstraps. There simply is no data available to support the contention.

There is also no attempt in existing correlation studies to go behind the raw data in an attempt to discern what LSAT/UGPA index scores may themselves correlate with. It is possible that index scores are only the most visible indicia of some deeper “causes” of success or failure. Looking only to LSAT and UGPA as predictors obscures other possible predictors that might have more predictive value. Place of origin, class, parental background, region of origin, race, undergraduate discipline, or undergraduate college all seem plausible candidates, for example. LSAT and UGPA might be stand-ins for these or other ascriptive

⁶¹ Blonde *et al.*, *supra* note 16 at 548.

⁶² See *Predictive Validity of the SAT*, *supra* note 33.

traits. We do not know because the research has not been done.⁶³ Perhaps we do not *want* to know.

VII. STANDARDIZED TESTING AND DISTRIBUTIVE JUSTICE

Tony Schwartz reported at length on an increasing trend for well-heeled students to hire tutors in preparation for the Scholastic Aptitude Test (SAT), an undergraduate admissions test similar in intent to the LSAT.⁶⁴ Arun Alagappan's "Advantage Testing" (an academic tutoring and test preparation company) charges US\$175 for 50 minutes with an Advantage Tutor in New York City. The average cost of working with an Advantage tutor in preparation for the SAT was reported to be between US\$5,000 and \$8,000.⁶⁵ Expensive it may be, but impressive claims are made with regard to the efficacy of quality tutoring in test-taking skills. Alagappan claims that the mean gain for students he personally "tutored in 1997 and 1998 was 266 points from the first time they took an official P.S.A.T. or S.A.T. to the last."⁶⁶ Furthermore, he asserts that fully "91 percent of the students who worked with any of the New York City-based tutors at Advantage increased their scores by at least 100 points."⁶⁷

Other tutoring companies are available on other cost formulae, just as one would expect in a functioning market economy. New York's Stanford Coaching, for example, provides SAT tutoring for US\$150–350 per hour, while Kaplan Educational Centres and the Princeton Review offer six- to eight-week SAT preparation courses plus practice tests for US \$800. Although Educational Testing Services (which administers the

⁶³ Two further points bear noting, though they do not speak directly to LSAC's methods and assumptions. First, the way in which LSAT scores are used by individual law schools frequently ignores the explicit cautions LSAC offers about LSAT's reliability: most admission and rejection decisions take place within a range of LSAT or index scores that is so narrow as to be statistically meaningless. Second, cynics might suggest there is a problem with the organization that creates the LSAT being the only body that systematically evaluates its usefulness. Though we do not necessarily share this view—LSAC's studies are done with rigour and *if their reports are read* the qualifications they offer are honest, direct, and clear—the problem of the "fox in the henhouse" or "poachers as game officers" does raise some questions.

⁶⁴ See T. Schwartz, "The Test Under Stress" *New York Times Magazine* (10 January 1999) 30.

⁶⁵ The tutoring services of Mr. Alagappan himself cost considerably more. At \$415 (approximately C\$600) per session and with sessions once or twice a week over an academic year, the total cost for one of his students could rise to approximately \$25,000 (roughly C\$37,500): *ibid.* at 30.

⁶⁶ *Ibid.* at 31.

⁶⁷ *Ibid.* at 31-32.

SAT) denies the benefits of coaching, such services are not lacking for customers: each company enrolls approximately 35,000 students a year.⁶⁸

By these standards Canadian LSAT preparation courses are a bargain: Canadian students can take a Kaplan LSAT preparation course consisting of ten three-hour sessions over a five-week period for C\$900. Alternatively, law hopefuls can also arrange for an intensive thirty-hour one-on-one tutoring program for C\$2,700 or a fifteen-hour program for C\$1,600.⁶⁹ Bargain-basement though they are by American standards, these are significant expenditures for most aspiring law students. The cost of one year of law school at the University of British Columbia, by comparison, is currently slightly under C\$3,000. Furthermore, the cost of sitting an LSAT needs to be taken into account if the social costs and benefits associated with admissions policies based on standardized aptitude tests are to be evaluated. In Canada LSAC charges C\$120 plus Goods and Services Tax to write the test, more than small change for most Canadians.

Now, if the law and economics movement of the past forty years has taught us anything at all it is that we should consider the aggregate (total) costs of any course of action independently of distribution (who pays). The present system of law school admissions imposes *de jure* costs on students (“externalities”) in the form of LSAT sitting fees and also predictable *de facto* costs associated with the courses students may feel compelled to take in preparation for this potentially life transforming examination.

The huge costs of the LSAT system may be better understood if some comparisons are considered. Other distributions of costs and benefits would produce some quite dramatic results. Suppose, for example, that a law school that averaged one thousand applicants annually abolished reliance on standardized testing, implementing instead a non-refundable application fee equivalent to the LSAT charges. This alone would add an extra \$120,000 to the faculty budget on an annual basis. In real-world equivalents, this is, roughly, the salary of two assistant professors, the cost of forty state-of-the-art student computers, ten sizable scholarships, or four placement officers. If we assume that, on average, every student pays an equivalent to Kaplan’s basic tutoring package (some will opt for the more expensive individual tutoring; some will “go it alone”) the costs associated with the use of LSAT are even more striking. At C\$900 (Kaplan’s charge) plus C\$120 (LSAT’s charge)

⁶⁸ *Ibid.* at 32.

⁶⁹ Letter from Kaplan Education Centre to D. Tong (9 March 1999).

this assumption would produce a total expenditure of C\$1,200,000 annually—enough to pay for an army of twenty assistant professors, 1,000 not-so-bad computers, forty-eight C\$25,000 scholarships, or forty administrative and support staff.

Even if LSAT produces measurable improvement over other admission strategies (a point that, all things considered, remains unproved) we would wish to consider whether its aggregate cost is overly high in relation to the marginal gain produced. There is no law faculty in North America that could not improve the experience and quality of education for all its students with an extra \$100,000 to \$1,000,000 in hand. The burden of proof may have been left with critics of LSAT-based admissions for far too long. In the absence of overwhelming proof of its usefulness, the LSAT system may be wasting societal resources on a fairly massive scale for no equivalent return.

The cost, moreover, is not only financial. It also creates psychological barriers, in direct proportion to a potential law school applicant's sense of his or her own social distance from elite institutions. Risk aversion, whether with respect to the psychological blow a low LSAT score might represent or the \$100 or \$1,000 to be gambled in direct costs associated with the law school admissions lottery, is not equally distributed across society.

VIII. CONCLUSION

In this article, we discussed several problems concerning LSAC correlation studies. In particular we emphasized concerns regarding late-bloomers, lack of transition courses to law school, re-examination of teaching and evaluation procedures, implausible predictors of professional abilities, and the varying first-year curricula at American and Canadian law schools. We also identified an almost total lack of Canadian research about these matters.

Although we believe that the thorough, tremendously rigorous studies produced by the United States' LSAC must not be accepted uncritically in Canada's different circumstances, this is not our major concern. Rather, the methodological presumptions that underpin these studies and the explicit limitations that arise from their focus and method must be brought from the shadows to become the focal point of informed discussions of law school admissions policies in Canada.

Canadian law schools must place greater priority on assessing their admissions criteria, particularly in light of their stated goals of equity and diversity. We can no longer assume that someone else has

done the necessary research or that LSAC can give them easy, off-the-rack answers to the hard questions law schools face in admissions decisions.

Those faculty members and staff who do look hard at their own faculty's admissions policies (there are a number of such individuals across the country) need to make their research public, not only within their own faculties, but also by sharing information among institutions and by publishing the results of their findings in learned journals, publicly available reports, and other media. As a matter of public concern, basic principles of scholarly inquiry require that research methods and findings be opened to assessment from outside. As custodians of the gateway to law, trusted by legal professions, the courts, and society at large to exercise a key discretion, we are bound by the maxim *delegatus non potest delegare*—as law teachers we cannot properly delegate our duties in this respect indefinitely to an outside agency. Continued uncritical reliance on LSAT and on LSAC correlation studies excuses law faculties from their duties to engage in thorough-going evaluations of what we do and what our public duties are. Given that only two law schools in Canada have ever conducted empirical studies to determine the efficacy of their admission policies, it is time for Canadian law schools to think seriously about admissions as they attempt to select the “best and the brightest” for the twenty-first century.

In pointing to these concerns, we do not wish to imply that there is any easy answer to the question “who should be admitted to law school?” We recognize both the administrative and the egalitarian appeal of “objective” criteria and we are aware of the dangers inherent in any admissions policy based on “umpire’s discretion”—a notorious form of lawlessness at best.⁷⁰ Nor do we in any way suggest that the objective should be anything other than ensuring the admission of deserving individuals who have the ability and determination to succeed both in their formal legal education and in their subsequent careers.

The task of identifying and training “the best and the brightest” to serve Canada’s communities is an onerous and important public duty, which imposes an enormous responsibility on Canadian law professors. After thirty years, we are now in the habit of relying on a foreign I.Q.

⁷⁰ The Windsor Law School study, for example, found that older, married students with children did best because of the “responsibility and stability perceived to accompany a successful marital relationship and the presence of children”: Blonde *et al.*, *supra* note 16 at 542-43. If such findings were to now find their way back into admissions criteria, it is by no means clear that the result would be an improvement over “objective” criteria from the point of view either of increasing diversity amongst the lawyerly population or of increasing upward social mobility for the talented but disadvantaged. On the dangers of “umpire’s discretion,” see L.L. Fuller, *The Morality of Law* (New Haven, Ct.: Yale University Press, 1964).

test to guard the portals of the Canadian legal profession. It is time to re-evaluate our assumptions and our practices. We are morally bound to do so.⁷¹

⁷¹ Standardized testing is in fact coming under increasing scrutiny in the United States. See, for example, the trenchant critique provided in N. Lemann, *The Big Test: The Secret History of the American Meritocracy* (New York: Farrar, Straus and Giroux, 1999). There has also been recent litigation in both Canada and the United States concerning the use and implementation of the LSAT by law schools: see, for example, "Graduate to Test Law School Admission Process in Court Action" *The National Post* (14 October 1999) A6.