

Anthony B. P. DuMoulin



## Learning from Mistakes

A lawyer's right to hang up a shingle in BC, and begin to charge for dispensing legal advice, depends only on the completion of certain formal educational steps: at least three years of an undergraduate degree, acquiring an LLB after three years of law school, followed by 10 months of articles with a senior lawyer, then 10 weeks back at school—the Professional Legal Training Programme (PLTC)—culminating in one final set of exams. Then you are considered qualified to be a lawyer in BC.

Then *the real education begins*.

At law school, you will have learned some case law, some basic principles and concepts, and the skills to **find** the law. During articles, and at PLTC, the idea is that the aspiring lawyer learns how to **apply** the law to the needs of specific clients in actual cases, but to some degree, even this learning is theoretical.

Only by practising law, over and over and over again (it isn't called "practice" for nothing), does the newly minted lawyer slowly learn how to be truly useful to a client.

Certainly a new lawyer can be useful to the firm for whom he or she works, by gathering the facts, doing research, and making court appearances. But in my view, the essence of practising law is giving advice, quickly and clearly, so a client can better decide how to act in a certain situation; good advice requires context and perspective. This can only be acquired by experience, by putting in time in the chosen field.

After 30 years of "putting in time" as a commercial solicitor, I am now beginning to have the education I need. After doing hundreds of business transactions, I can now say to a client: "...in my experience, that will or won't work...", or whatever. It might be a request for an extension of some kind or a very aggressive letter or holding out for better terms in a negotiation, explaining a legal process to a client, or doing a risk analysis. To the extent I do any of these well, it is only because I have made some poor or clumsy calls in the past, and learned from those mistakes.

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There is more to it than putting in time, of course. During those 30 years, I constantly attended continuing legal education courses in my field, and taught many, as well. This kept me up to date on changing business and practise trends, and filled in holes in my practice experience up to that point. It no doubt also reduced the number of mistakes I made at the expense of my clients—but just working through client problem after client problem was by far the best education of all.

When I speak of mistakes, I am not confessing to having made technical mistakes over and over again, like missing a closing date, or getting the numbers on

a deal wrong (though I suppose that may have happened the odd time). I am talking about the very elusive matter of judgment, of being able to sense when something just doesn't ring true, of identifying sticking points or danger signs before it is too late, or of conducting negotiations with what hockey commentators call "soft hands." In these areas, experience really is the best, and maybe the only, teacher. This, of course, is as true for Notaries as it is for lawyers. I have the privilege of teaching qualifying Notaries once or twice a year; these students are invariably familiar with their excellent course materials. In most cases, all they lack, and seek from me, is a practical context, with real client examples, to help them understand the legal principles they have studied. These aspiring Notaries will learn that they, too, must patiently put in their time. And until they have experience, they should not hesitate to find assistance from someone who does.

My adult children chide me, somewhat gratefully, I believe, for always having said to them about their periodic set-backs while growing up, "think of it as a learning experience." But cliché or not, it is true. ▲

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## Questioning Traditional Pedagogy in the Face of Student Diversity

The challenge for all teachers of law is to make legal education stimulating and meaningful for students. Effective teaching involves promoting and maintaining students' motivation, concentration, and attention throughout a course. The most effective way to do this is to engage students in active thinking and learning. Varying students' activities in the classroom, for example—using simulations, role-playing, and problem-solving—helps maintain interest. Using a variety of teaching methods also overcomes the problem of student diversity, one of the biggest challenges to effective teaching.

It is trite to say that all learning is influenced by students' prior background and knowledge. All of us process new information within the context of our prior experiences. For students of law to flourish—be they legal secretaries, legal assistants, Notaries Public, or lawyers—and whether those students are enrolled in a university law faculty, a college program, or a continuing legal education course, law teachers must respect and accommodate students' diversity. Teachers are responsible for creating a culture and climate in the classroom that is sensitive to differences in race, ethnicity, gender, age, sexual orientation, and cultural and socio-

economic background. This involves making both the curriculum and teaching methods more inclusive, to eliminate students' feelings of alienation because those feelings are barriers to learning.

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### *Do our choices in pedagogy match students' goals?*

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In addition to diverse personal characteristics, students bring various learning styles and forms of intelligence<sup>1</sup> to the classroom. Some students understand oral explanations better, others prefer visual presentations, and all probably benefit from repeating the material in different forms. Theories about learning indicate that each student has a preferred mode of learning, that people learn in different ways, that a variety of learning styles will be present in any classroom, and that no one teaching method is effective for all learners<sup>2</sup>. Teachers are most effective when they are aware of these differences in learning style, and when they cater to diverse student aptitudes by presenting each topic in several different modes.

Not only does this help to make the topic understandable to all students, varying the sensory channels helps gain and maintain students' concentration and attention.

Students of law have diverse goals and objectives. Some have taken an academic route to a degree, diploma, or certificate, without any prior law-related work experience. For example, with legal secretary and legal assistant programs being offered at colleges across Canada, more and more people are entering this aspect of legal work directly through the academic route, instead of working their way up the office ladder<sup>3</sup>. Others are changing careers or upgrading their credentials by taking courses while continuing to work<sup>4</sup>. What do these students want from their legal education? Do our choices in pedagogy match students' goals?

For the past century or more, the "case method," with its accompanying Socratic questioning, has dominated the education of lawyers<sup>5</sup>. This pedagogical method focuses primarily on one skill set: it teaches law students how to read and critically analyze cases, so that they can determine what the law is at a particular point in time. This is a practical skill that