31 March 2015

Law Admissions Consultative Committee
Law Council of Australia
GPO Box 1989
Canberra ACT 2601
AUSTRALIA

By email: frances.mcmurray@lawcouncil.asn.au

Dear Ms McMurray,

Submission: Review of Academic Requirements for Admission to the Legal Profession

I make the following comments in relation to the questions posed by the Law Admissions Consultative Committee (LACC) on page 13 of the paper entitled ‘Review of Academic Requirements for Admission to the Legal Profession’.

Should any or all of the following areas of knowledge be omitted from the Academic Requirements:

Civil Procedure
Company Law
...
If so, why?

Should Statutory Interpretation be included as an Academic Requirement?

Is any other area of knowledge, not presently included in the Academic Requirements, now of such basic potential importance to the great majority of practitioners today, so that no law graduate should be permitted to practise without it?

The following points particularly concern the contribution made by Civil Procedure and Company Law to the basic knowledge that should be acquired by a student with
an LLB or JD qualification. I have taught and researched in these areas for more than two decades.

To summarise my submission, I consider that these two areas should not be omitted from the Academic Requirements (also known as the Priestly 11). The reasons for this view are related to the basic knowledge that is required to equip graduates with a law qualification as well as the institutional arrangements that flow from the Academic Requirements. These two areas continue to be of basic importance to the great majority of practitioners today, so that no law graduate should be permitted to practise without them. Further, by situating these courses in universities, research into the areas is cultivated with beneficial effects for the profession and the judiciary.

I begin with an invitation to the Committee to examine what is presently covered in Australian Law Schools in these areas. Company Law is often referred to as Corporations Law or Corporate Law in university courses because it deals with a broad category of corporate structures including multinational corporations. Civil Procedure is usually taught as part of a course that deals broadly with dispute resolution and the civil justice system rather than focussing upon the rules of civil procedure. I shall therefore refer to the two areas as Corporations Law and Litigation and Dispute Resolution.

**Corporations Law**

In my view, the argument about including Corporations Law course in the Academic Requirements is almost indisputable. Overall, it is impossible to understand how law operates without understanding corporations. Regardless of how anyone proposes to use legal knowledge (or even general knowledge to some extent), they need to understand how corporations are created and structured and how they operate as critical participants in modern life. There are other aspects of the study of Corporations Law that add to an understanding of law. For example, an understanding of corporations is a valuable lens through which legal personality and agency may be examined. Therefore, whilst Corporations Law is an important element of an understanding of business law, it is not just business law.

**Litigation and Dispute Resolution**

As regards Litigation and Dispute Resolution, these courses cover a vista of material that deals with civil dispute resolution and the civil justice system generally. This material is vital to a basic understanding of law. Whilst I agree that a discussion of ADR is a valuable inclusion in the curriculum, any discussion of dispute resolution must include litigation. ADR is often taught as part of university litigation courses. ADR is now part of litigation practice and is frequently mandated by legislation or ordered by courts. We have been teaching it as part of the Litigation and Dispute Management course at ANU since 1999.
But the important point is that these courses deliver a lot more than either dispute resolution or civil procedure. They are commonly used as a vehicle to understand the civil justice system, jurisdiction, judicial power and how case law is developed. By operationalising substantive law, the courses also deliver important messages about legal reasoning.

I note that this is a proposal to export these courses into PLT rather than including them in LLB or JD study. There are various reasons why I consider they need to remain in courses where fundamental legal concepts are examined. Most of PLT courses are short and focus upon practical skills. There is little time to examine important conceptual and policy issues which need to be examined as part of a fundamental knowledge of law. Further, with notable exceptions (including ANU), research is not encouraged in PLT courses and a diminution in research in these areas potentially has a corrosive effect on the legal profession and the judiciary. For example, in the recent Productivity Commission’s Inquiry into Access to Justice Arrangements, a large number of submissions came from researchers working within universities. Clearly the submissions from the profession, the judiciary, tribunals and consumers are valuable but universities provide a locus of research about the justice system that is independent and is fostered by academics teaching compulsory courses such as Litigation and Dispute Resolution and Ethics. The final report of the Productivity Commission referenced a significant body of research undertaken by academics in law schools or equivalent institutions, rather than PLT bodies.

This research is of critical importance to the profession and to the judiciary. For example, during the last tranche of national legal profession reform, one of the suggestions for reform was the creation of a national regulator by the executive. This model has been adopted in other professions in Australia, notably health practitioners. An important question arose in the debate about the legal profession because of the need to secure the independence of the legal profession which, in turn, protects the independence of the judiciary. Academic commentary on the proposal was important to the fine-tuning of any policy changes.

**Statutory Interpretation**

I agree that Statutory Interpretation should be included as an Academic Requirement but in my view it is best taught as a skill across a number of courses such as Constitutional Law, Administrative Law and Corporations Law. It should not be mandated as a standalone course which displaces other courses.

**Conclusion and an Invitation**

For the reasons set out above I urge the Committee not to exclude the areas of knowledge of Company Law and Civil Procedure (recognising, as discussed above, that the ambit of this knowledge has evolved considerably since the Priestley 11 was developed) from the Academic Requirements.
I endorse the submissions from the Corporate Law Teachers Association and the joint response submitted by Dr Penovic on behalf of legal academics engaged in teaching and research on civil dispute resolution. If the Committee wishes to know more about the teaching and research in these areas, academics from both disciplines would be very happy to consult with the Committee.

Yours sincerely,

Peta Spender
Professor
ANU College of Law