

A STUDY OF LAY KNOWLEDGE OF LAW IN CANADA

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ABSTRACT

It has been long observed that non-lawyers appear to internalize certain "myths" about law and the legal system. This study examines what Canadian undergraduate students, as lay persons, know about the law and what personal background characteristics, if any, contribute to accurate public legal information.

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I. INTRODUCTION

*It ain't so much ignorance that ails mankind
as it is knowing so much that ain't so.¹*

Canadians who are not formally trained in the law as lawyers are beginning to demand more understanding and control over the law and legal process that affects them. This phenomenon is manifest in ardent calls for plain-language documentation and legislation and in increased demand for public self-help seminars on various legal topics. Most non-lawyers just do not know where to turn when they suspect that they have a legal concern on their hands. They do not know how to find an appropriate lawyer, how

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1. DONALD DAY, UNCLE SAM'S UNCLE JOSH 188 (1953).

much the service will cost, or whether they are receiving effective legal representation. These difficulties have been broadly described as "access to the law" issues. Meanwhile, governments continue enacting and amending laws and creating policies and programs without accurate information on targeting or understanding these issues.

The legal profession is not inherently interested in raising the level of public legal knowledge, at least not without a fee. While general legal knowledge could be considered an important public good, policymakers are content with the existing polar model of private lawyers serving individuals and businesses by explaining the law for a fee on a case-by-case basis.²

Every Canadian lawyer has read media reports and sat through public sessions where myth or American law was presented as binding Canadian law. The exposition of the law to non-lawyers often follows a simplistic "recipe book" approach. It is pulled out of a black box from somewhere and broken down into manageable and easily generalized pieces. Clients, when they do finally consult lawyers, may attend upon the lawyer's office with these unarticulated assumptions about the role of law and lawyer. That initial point of contact may be the defining moment of the lawyer-client relationship.

A frightening number of businesspeople will purchase and rely upon American law books written for businesspersons, or they will engage speakers on subjects such as employment and intellectual property law, unaware that the law of the local jurisdiction in which they are operating is palpably different. These experiences provide poignant, if not embarrassing, examples of the gap between the "law in the books" and the "law in action."³

Recently, high-profile cases, primarily criminal, have received extensive coverage in the popular media. Most of these cases have been from American courts. Canadians have access to the main American television broadcast networks, where the cultural integration is so extensive that many Canadians are lost at times to distinguish between Canadian and American programming. It is not unexpected that Canadians would have difficulty distinguishing Canadian and American law.

Legal knowledge issues also apply to instruction of the public, whether

2. This is to be contrasted to the health care model in Canada. "Just in time" and emergency health care is an expensive paradigm. Canadian governments, which pay for non-elective health care, enthusiastically engage in public medical education and prevention programs.

3. These terms are borrowed from sociological jurisprudence, and have since been adopted by the American Realists and Critical Legal Theorists. See LORD LLOYD OF HAMPSTEAD & M.D.A. FREEMAN, *LLOYD'S INTRODUCTION TO JURISPRUDENCE* 548 (Stevens & Sons Ltd. 5th ed. 1985). "[S]ociological jurists tend to be sceptical of the rules presented in the textbooks and concerned to see what really happens" *Id.*

that be business students or other lay persons. While distinctions and awards commonly exist for success in explaining science⁴ and medicine in a meaningful way, no such importance is placed on the law. The role and method of the standard business law course in management education,⁵ for example, have been vigorously debated over the years.⁶ From the several decades of discussion and inquiry about the nature,⁷ needs⁸ and design⁹ of legal studies in American management education, a consensus has not emerged.¹⁰ All that may be said is that the interests of the businesspersons

4. An example of such an award is the Royal Society of Canada McNeil Medal for the Public Awareness of Science.

5. Legal studies are now essentially taught from the "legal environment of business" perspective, instead of a black-letter perspective. This orientation is credited to ROBERT AARON GORDON & JAMES EDWIN HOWELL, *HIGHER EDUCATION FOR BUSINESS 205* (1959), which suggests that the rules-oriented topics be dropped in favor of a "legal framework of business" approach.

6. See, e.g., AM. BUS. LAW ASS'N, *REPORT OF THE COMMITTEE ON THE STATUS OF LAW FACULTY IN BUSINESS SCHOOLS* (1990); Thomas W. Dunfee et al., *The Business Law Curriculum: Recent Changes and Current Status*, 18 AM. BUS. L.J. 59 (1980); Elliot Klayman & Kathleen Nesser, *Eliminating the Disparity Between the Business Person's Needs and What is Taught in the Basic Business Law Course*, 22 AM. BUS. L.J. 41 (1984); Charles R. McGuire, *Logic and the Law Curriculum: A Proposed Conceptual Framework for "The Legal Environment of Business,"* 23 AM. BUS. L.J. 479 (1986); Gary A. Moore & Stephen E. Gillen, *Managerial Competence in Law and the Business Law Curriculum: The Corporate Counsel Perspective*, 23 AM. BUS. L.J. 351 (1985); Samuel S. Paschall, *Expanding Educational Objectives Through the Undergraduate Business Law Course*, 19 AKRON L. REV. 615 (1986); LYMAN W. PORTER & LAWRENCE E. MCKIBBIN, *MANAGEMENT EDUCATION AND DEVELOPMENT: DRIFT OR THRUST INTO THE 21ST CENTURY?* (1988); Reed et al., *The Role of Contracts in the Introductory and Only Law Course that Most Business Students Will Ever Take*, 9 J. LEGAL STUD. EDUC. 1 (1990); Mark Schlesinger & George Spiro, *Does Legal Education for Managers Teach Them to Think?*, 20 AM. BUS. L.J. 409 (1982); Art Wolfe, *Teaching Business Law in the 1980's: From Law as Rules to Law as a Way of Seeing*, FOCUS L. STUD., at 4, col. 1 (1987); Art Wolfe, *Business Education: The Rule of Law and Ethics*, 9 J. LEGAL STUD. EDUC. 97 (1990).

7. See, e.g., Joel J. Dauten, *A Look at Business Law Education in AACSB Schools*, 2 AM. BUS. L.J. 329 (1964); Elaine D. Ingulli, *Transforming the Curriculum: What Does the Pedagogy of Inclusion Mean for Business Law?*, 28 AM. BUS. L.J. 605 (1991); Dunfee et al., *supra* note 6; Schlesinger, *supra* note 6.

8. See, e.g., Klayman & Nesser, *supra* note 6; Moore & Gillen, *supra* note 6; Reed et al., *supra* note 6; John W. Yeagain & John R. Tanner, *Alumni Perspectives on the Business Law Curriculum*, 9 J. LEGAL STUD. EDUC. 37, 51 (1990).

9. See generally John D. Donnell, *Redesigning the Required Undergraduate Business Law Course*, 2 J. LEGAL STUD. EDUC. 1 (1984); Allison et al., *The Role of Law in the Business Curriculum*, 9 J. LEGAL STUD. EDUC. 239 (1991); Paschall, *supra* note 6; Wolfe, *Teaching Business Law in the 1980's*, *supra* note 6.

10. In April 1991, an amendment to the Curriculum Standard of the American Assembly of Collegiate Schools of Business added "legal and regulatory environment" as a required program of instruction. See AM. ASSEMBLY OF COLLEGIATE SCH. OF BUS., *CURRICULUM STANDARD* (Amend. 1991).

will be well-served by understanding the legal framework in which they operate.¹¹ In order to find optimal ways of educating a student, it is useful to assess what knowledge or misunderstandings the student brings to the course. What are the student's sources of that information and how does one effectively teach accurate legal information to non-law students?¹²

The purpose of this article is to describe the importance of public legal education, illustrate why the current model for public legal education in Canada is ineffective, and describe and analyze a study which clearly exemplifies that the confusion in public legal knowledge in Canada has a definitively American fragrance.

II. FRAMEWORK FOR LAY KNOWLEDGE OF LAW

A. *Professional Legal Education*

Apart from a possible elementary school,¹³ junior high,¹⁴ or high school course,¹⁵ which can have a tendency to trivialize law as a game,¹⁶ and some

11. A parallel can be drawn here to sports. Knowing the laws applicable to business decisions is similar to knowing the rules of any sport. Being knowledgeable of the rules, without more, does not ensure success in business, or in sports. On the other hand, if one is not knowledgeable of the rules governing the business or sport in which one is engaged, occasionally one will be set back or penalized. Nevertheless, a good businessperson, like a good athlete, could still be successful on the strength of other native abilities. Over the last decade, however, the law has become a more coercive influence in business. One may indeed fail in business today as a result of legal consequences flowing from unenlightened planning and decisions.

12. In many of these institutions where there is a business law program, the courses are not taught by lawyers, or the law must share billing with political, social and economic environment perspectives. See generally AM. BUS. LAW ASS'N, *supra* note 6; Yeargain & Tanner, *supra* note 8.

13. See, e.g., CALGARY BOARD OF EDUCATION, INVESTIGATING CANADIAN LAW: A UNIT FOR ELEMENTARY SCHOOLS (1980). In the United States, see generally DAVID T. NAYLOR, VALUES: LAW-RELATED EDUCATION AND THE ELEMENTARY SCHOOL TEACHER (1975); ABA SPECIAL COMM. ON YOUTH EDUC. FOR CITIZENSHIP, DARING TO DREAM: LAW AND THE HUMANITIES FOR ELEMENTARY SCHOOLS (Lynda Carl Falkenstein & Charlotte C. Anderson eds., 1980).

14. See, e.g., CHERY MATHESON, CRIMINAL MOCK TRIAL FOR JUNIOR HIGH SCHOOL STUDENTS (1977); NEIL SMITH & STEVE L. HAMILTON, LEGAL AWARENESS COURSE: AN ALTERNATIVE SEMESTER FOR ALIENATED JUNIOR SECONDARY STUDENTS (1978).

15. For legal education in Canada, see ALTA. EDUC., LAW 20-30 CURRICULUM GUIDE (1985); TEACHER RESOURCE MANUAL (1989). For legal education in the United States, see ABA SPECIAL COMM. ON YOUTH EDUC. FOR CITIZENSHIP, BUILDING BRIDGES TO THE LAW: HOW TO MAKE LAWYERS, JUDGES, POLICE AND OTHER MEMBERS OF THE COMMUNITY A PART OF YOUR LAW-RELATED EDUCATION PROGRAM (Charles White ed., 1981).

16. See, e.g., RUTH MCGEE ET AL., EXPLORING LEGAL CONCEPTS THROUGH PUPPETRY (1977); ABA SPECIAL COMM. ON YOUTH EDUC. FOR CITIZENSHIP, THE \$\$ GAME: A GUIDEBOOK ON THE FUNDING OF LAW-RELATED EDUCATIONAL PROGRAMS (Charles J.

university-level political science courses, the Canadian student has virtually no opportunity to study law except to do so as a full-time law student in a professional program.¹⁷ The difficulty people in a common law jurisdiction experience in gaining knowledge of, and access to, the law has been studied and widely lamented.¹⁸

The prodigious growth of the legal profession is largely a result of the growing need for technical knowledge and skills. Law schools, exclusively, have been selected to house the education of these skills and knowledge.¹⁹ The learning of law has been an "all-or-nothing" exercise. One either makes a career decision to go to law school for three years to be formally trained as a lawyer, or one stays on the outside of expertise and depends upon lawyers. The choice is whether to be a lawyer or a client. One would think the rationale for this dichotomy is that "a little bit of law" cannot be taught effectively or that one cannot be trusted to safely learn only "a little bit of law."²⁰ Law schools have evolved as the exclusive educational repositories of specialized legal knowledge and technical skill. With large numbers of declarations in favor of public access to the law, efforts have primarily focused upon access to lawyers instead of public legal education.

Technical skill, therefore, in the form of lawyers, is now in abundance in Canada, and the technical profession is itself now examining ways to ensure that the available pool of skill is not disproportionate to the demand. At the same time, generalized public education about the operation of the Canadian legal system and useful-to-know principles in substantive spheres

White III, ed., 1975).

17. Two exceptions to this are the full-time non-professional legal studies program (B.A.) at Carleton University in Ottawa and the B.A. program in Law and Society at York University in Toronto.

18. See, e.g., MARTIN L. FRIEDLAND, *ACCESS TO THE LAW: A STUDY CONDUCTED FOR THE LAW REFORM COMMISSION OF CANADA* (1975); DALE GIBSON & JANET K. BALDWIN, *LAW IN A CYNICAL SOCIETY?* (1985). Few academic lawyers in Canada participate in public legal education. See The Consultative Group on Research and Education in Law of the Social Sciences and Humanities Research Council of Canada 40 (1983) [hereinafter *Arthurs Report*].

19. The term "legal education" today is synonymous with lawyer training in Canada. See generally DAVID GRAHAM BELL, *LEGAL EDUCATION IN NEW BRUNSWICK* (1992). The *Arthurs Report* was comprehensive but did not even address the matter of public legal education. See *Arthurs Report*, *supra* note 18.

20. Management education has traditionally provided the opportunity for people who did not want to become lawyers to learn about the legal system and law; in other words, to learn "a little bit of law," at least as it is applied to business. A law course for business students should be similar to preventative medicine. The students would not be trained as lawyers, so teaching the minutiae of black letter rules would be a grossly misguided approach. They should be given the legal framework and principles to enable them to recognize the potential for certain legal problems and to engage counsel. Overall, they should be taught the law in a way which allows them to arrange their affairs to minimize legal liabilities and, generally, to better conduct their businesses.

of law would seem to be in critically short supply.

B. *The Case for Public Legal Education*

Modern North American society has a voracious appetite for continuing practical education, including legal education, which can be applied to one's work or personal life. Public legal information courses and workshops are highly utilized, perhaps because many people have an abiding interest in learning about the law and how it applies to their lives. The legal framework in which one operates, whether that be in business or in the community, has long been a subject of popular interest. It may also be seen as (and often has a reputation of being) an interesting or useful optional subject without the necessity of full-time study in a faculty of law.

Consider non-professional business law programming at the University of Calgary, which is typical of the experience at other Canadian universities. Business law is offered through a few courses in a credit degree or diploma structure in universities and colleges and through topical continuing education courses or seminars conducted for the public in the evenings on campuses or in schools based in the community. Rarely are there specific educational prerequisites. The introductory business law course is most often a service course open to all university or college students. Such a course in business law may be the only opportunity that the average student in Canada has to actually read constitutional texts. In any event, students take the course for a number of reasons, including gaining admission into quota programs such as schools of business or law.

Nevertheless, several studies point out the need for even greater general access to public legal information.²¹ The problem would seem to arise from the "all-or-nothing" approach to the study of law in the Canadian legal system. Perhaps, society is cynical about law and legal institutions.²²

If accurate public knowledge of law is important in modern society, there are at least seven categories of persons or constituencies who benefit from a robust level of legal knowledge. These categories and the benefits which would accrue to each are described in the following discussion.

1. *The Local Community*

Even with some 5000 lawyers actively counselling Albertans, usually on specific legal issues as they arise and usually for professional fees, lay

21. See, e.g., FRIEDLAND, *supra* note 18; STEPHEN BRICKEY & DENIS BRACKEN, PUBLIC LEGAL INFORMATION NEEDS IN CANADA: TOWARD A CONCEPTUAL FRAMEWORK (1982).

22. See generally GIBSON & BALDWIN, *supra* note 18.

citizens will have their overall personal and professional interests best served with an accurate understanding of the legal framework and principles in which they operate. A disproportionate degree of available legal resources are applied in the governmental and corporate commercial spheres. While there is generally considered to be a surplus of *available* lawyers in the province to serve the public need, there is (and may always be) an acute shortage of accurate information and advice provided on an affordable basis for the average citizen. Most people simply do not know where to turn with a legal problem. Would we tolerate a population being as unknowledgeable about their health, personal safety or how to raise their children as they are about the law and how it applies to them?

Even the annual "Law Day" events held in Alberta, and organized and conducted by volunteer practicing lawyers, are billed as "Fun for the Whole Family," as if they are some kind of side show. The only purpose of participating in the event is to have "fun," not to seriously learn anything useful. This conclusion is also supported by the use of costumes and animal characters with storybook plots to illuminate the legal system which operates in Alberta.

Lay persons appear to steadfastly cling to "legal myths." These myths are likely the products of social inculcation or broadcast programming which precede enrollment in non-LL.B. law courses. These myths are relinquished only reluctantly, if at all, even when accurate legal information is presented. One expects that public uncertainty and misunderstanding of the Canadian legal system contributes to both suboptimal lawyer-client relationships and poor lay decision-making when attempted without counsel.

One expected benefit of a more legally-literate population would be a better discharge of civic responsibility. This crosses over all the roles people fill in their communities as sons and daughters, parents, employers, employees, businesspersons, neighbors, landlords and tenants, motorists, educators and students, consumers and producers, property owners, creators, and electors. As the test survey suggests,²³ Albertans generally have an appalling lack of knowledge of the rules upon which their society is founded and governed. If they do not know the sources of law or constitutional fundamentals, how can one expect them to know about the current national unity dilemma, or how to inform themselves during an election or referendum, or law reform? An even stronger case may be made regarding their knowledge of the private law domain. If they actually believe that contracts are unenforceable unless they are in writing, or that any and all discrimination is illegal, or that the monetary jurisdiction in small claims court is half of what it actually is, their rights are not being vindicated, and judicial resources are not being optimally allocated.

23. See *infra* Table 4.

2. *Students and Instructors of Public Legal Education*

One of several major objectives of non-LL.B. law courses is to simply *inform* students about the law and legal system, its sources and categories, the system of courts, the civil litigation process and other mechanisms for resolving disputes, and the institutional and constitutional frameworks.²⁴ A survey of selected substantive topics such as torts, contracts, property, and business organizations introduces the student to some concrete terminology, legal rules and principles.

In order to determine how to best inform the lay student, it is useful to assess what knowledge or misunderstandings the student brings to the course. What are the student's sources of that information, and what is the best method for teaching accurate legal information to non-law students?

3. *The Legal Profession*

Lawyers are interested in general knowledge levels and attitudes that their clients have of legal principle and of lawyers. This information about what the client knows (and does not know) or believes about the law and lawyers can assist the lawyer in understanding the client when that client calls the lawyer with a legal problem. This informational framework can only serve to improve the lawyer-client calculus. Lawyers may also be able to use this information to better reach out, or market, to clients.

4. *The Law Society*

The law societies of the various provincial and territorial Canadian jurisdictions have been handed the legislative mandate, to the extent there is one, for public legal education. This commission to the law societies may be a partial quid pro quo for the right of the profession to govern itself, free from micro-management by government.

A number of law society initiatives in Alberta, such as the Lawyer Referral Service²⁵ and Alberta Law Foundation-sponsored programs,²⁶ and

24. Other objectives include writing across the curriculum, introducing the application of ethical decision-making, developing critical thinking and analysis skills, and cultivating other skills which are transferable to business. *See generally* 15 AM. BUS. L.J. 1 (1977) (dedicating an entire volume to the subject of business law education). *See generally* John W. Collins, *Creative Analysis of Judicial Decisions*, 19 AM. BUS. L.J. 360 (1981); Nancy Kubasek, *The Research Paper: A Tool for Developing Critical Thinking Skills in the Legal Environment of Business Classroom*, 9 J. LEGAL STUD. EDUC. 317 (1991); Moore & Gillen, *supra* note 6.

25. The Lawyer Referral Service is designed to provide short installments of free legal

support from university law libraries operate to serve the public. But what is their impact on the general level of public legal education?

5. *Mass Media*

If, as expected, the popular media has the greatest influence in Canadian society on what people learn and understand about the law and legal system, how should the media discharge its responsibility for balance and accuracy?

Most of the print and electronic journalists and editors do not have any specific or formal legal education. They cover the law or courthouse beat as laypersons, dependent upon expert legal commentary if they decide to seek it. Their selection of what genre of law cases (high-profile individuals and companies) and issues (mostly public law such as criminal or constitutional) to cover is predictable, given the drivers of the mass media industry. These drivers are entertainment and circulation, not education.

6. *The Consulting and Employment Training Industry*

How many times has one been at a seminar, conference, or training session led by a non-lawyer who cultivates "liability hysteria"? Examples of this misled legal instruction include creating scenarios of virtually unlimited managerial liability relating to human rights and sexual harassment in the workplace, as well as environmental impairment. Very large damage awards are spoken of in the former, and certain imprisonment for managers in the latter. In fact, only the most egregious circumstances lead to such alarming consequences.

In other instances, federal legislation is cited to support a point being made which does not apply over a provincial jurisdiction, and vice versa. Often, lay consultants rely upon imprecise or incomplete lay reports and summaries for their statements of the law. The cynic might explain this as a strategy to nourish the consulting industry in order to increase dependence on consultants. Often the law component is merely interstitial or incidental to the broader substantive objectives of the session. These objectives marginalize the law even more in relation to other issues.

7. *Government Public Policymakers*

How do policymakers effectively target their programs without an

advice by a participating lawyer.

26. Such programs include Calgary Legal Guidance, Student Legal Services, and the Legal Resource Centre (Edmonton).

adequate profile of their target market? One often hears about the high levels of communicative (written and reading) illiteracy in Canadian society, but government standard forms (*e.g.*, tax forms and booklets) and other communications go out to the public with little guidance about what people should know about the law. The 1995 Québec Referendum presumed that all voters knew the actual text of the act upon which they were voting.

The Alberta government spends a great deal of money on post-secondary education and career development, but no one has ever asked or debated how much should be spent on legal education or how such funds should be allocated.

C. Responsibility for Public Legal Education

As already noted, the various provincial law societies have been given the mandate for public legal education.²⁷ There is, *prima facie*, a notional conflict of interest in conferring upon the body, which exclusively governs the entry and conduct of the profession, the mandate to serve the general legal information needs of the public.

One might argue that all of what may be considered "public information" can ultimately be contracted for privately with individual lawyers for a fee. In addition to other skills, legal information and the application of the law to any particular set of facts is precisely why lawyers are in a profit-seeking business. The law society, which today also has a mandate to promote the interests of its members, would be rationally inclined, in a marketplace where the supply of lawyers exceeds the demand for their services, to minimize its contribution to public legal information and maximize the private contracting for individualized legal information.²⁸ It is not surprising that the legislation does not set quality or quantity standards for the law society to follow when delivering legal information to the public. Nor does the legislation require sanctions for failure to comply.

27. *See, e.g.*, Legal Profession Act, R.S.A., ch. L-9.1 (1980) (Can.). The Act states: "The objects of the Alberta Law Foundation are . . . to receive money and property [from interest accumulating in member lawyers' trust accounts] and to maintain and manage a fund . . . for . . . contributing to the legal education and knowledge of the people of Alberta and providing programs and facilities for those purposes." *Id.* § 116.

28. An example of this approach may be the Lawyer Referral Service, which is sponsored by several law societies. Out of a tacit recognition that lawyer advertising may be ineffective and that clients may encounter difficulty in selecting a lawyer, a prospective client can call the Service and will be given the names of three lawyers who practice in that field of interest. The lawyers, when contacted in this way, attempt to provide 30 minutes of free legal information. Many times, however, the lawyer's information amounts to little more than a "pitch" to meet at the lawyer's office and do business.

III. A STUDY OF CANADIAN LAY KNOWLEDGE OF LAW

A. *Survey Administration*

A questionnaire²⁹ was presented to each section of the Legal Environment of Business course in the autumn semester of September 1993. The survey was the very first item presented to the students and preceded distribution of the course outline or any discussion about the course or its content. The respondents in this survey had already registered or were contemplating registration in the course. It is estimated that about fifteen percent of the respondents would not have ultimately completed the course.

Participation in the survey was entirely voluntary. The voluntary nature of the survey was indicated in writing on the front of the instrument, and the students were advised of it orally. They were also assured that it was not an evaluation that would be used to the favor or detriment of any student. No specific identifying information was elicited, nor was any supplied. All information was treated anonymously and in aggregate form.

The survey took twenty to thirty minutes to complete and the respondents were given as much time as they required. Arrivals more than ten minutes late in the classroom were not invited to participate. Due to the circumstances of this administration, the response rate was approximately ninety-nine percent.

B. *Sample of Survey Respondents*

The respondents³⁰ were self-selected to a considerable degree. One might expect that these respondents, as representatives of young Canadian post-secondary students, are generally knowledgeable about the law and legal system. They might even be expected to have an interest in the subject.

All the respondents were daytime, credit-seeking university students who have met a minimum seventy percent post-secondary admission or equivalent lateral transfer standard. The course in which this survey was administered is open for enrollment to all university students, and it is eventually required for completion of the Bachelor of Commerce program. In 1993, about one-half of all students who completed this course went on to complete the Bachelor of Commerce degree.

29. The questionnaire consists of nine pages of questions plus two instruction pages.

30. The sample size is 252.

The mode age was nineteen, as the following Table illustrates:

TABLE 1	
Age	Percentage of Respondents
18	12%
19	24%
20	19%
21	15%
22	10%
Other	<u>20%</u>
	100%

Men comprised fifty-four percent of the respondents, and women comprised forty-six percent. This sample described itself as "primarily urban" in background. Less than one-quarter claimed a "primarily rural" background.

The respondents were placed into groups based upon the number of years of study completed. The largest group of respondents had fully completed only one year of post-secondary studies, but as Table 2 (non-cumulative) shows, many were advanced undergraduates.

TABLE 2	
Number of Years of Study Completed	Percentage of Respondents
1	39%
2	26%
3	19%
4	10%
Other	6%

Almost half, forty-eight percent, had not taken a course, seminar or other formal instruction in the law and legal system at the time this survey was administered, and only ten percent described themselves as "quite" or "extremely" familiar with the legal system.

Very few respondents had direct personal experience "in a legal case as a participant, witness or juror" as the following table shows.

TABLE 3							
Experience	(none) 1	2	3	4	5	6	7 (a great deal)
Percentage	61%	17%	6%	5%	5%	3%	3%

C. Description of the Research Questions

The first-level objective of this study is concerned only with determining the extent of accurate general legal knowledge possessed by this sample of the Canadian lay population. This knowledge will be judged on two distinct bases:

- 1) ability to correctly *distinguish* legal events and legal terminology and identify which are Canadian and which are American;³¹ and
- 2) random Canadian legal *content* over a number of legal subjects in the public domain.

The second-level objective is to determine how the following personal characteristics or factors correlate with accurate general legal knowledge:

- 1) age;
- 2) gender;
- 3) number of years of post-secondary education completed;
- 4) urban versus rural background; and
- 5) extent of involvement (as a participant, witness or juror) in the legal system.

D. Data Analysis Methodology

Each question is accorded equal weight to get a total assessment of accurate knowledge. In other words, the objective is to determine how knowledgeable (correct) the respondents were as a whole.

Respondents were asked to answer all questions, but not all did. Surveys which did not contain an answer for one or more questions were not entered in the calculations with respect to that question or those questions.

31. Some of these events enjoyed higher press coverage than others, but each of them was current.

Of the 252 surveys returned, fifty had one or more questions unanswered.

All descriptive statistics in this study, such as frequencies and correlations, were obtained using SPSS for Windows. The causal correlational figures were accomplished using PLS-Graph. PLS-Graph is a Windows-based software application used to perform Partial Least Squares analyses. Partial Least Squares analysis is a sophisticated second generation multivariate statistical technique that:

- 1) can account for errors in measurement;
- 2) optimally weighs individual items to create indices or factors that the items are attempting to measure; and
- 3) does not require typical statistical constraints such as normality of data nor large sample size.

As a second-generation technique, Partial Least Squares subsumes many of the first-generation methods, such as multiple regression, discriminant analysis, canonical correlation, analysis of variance, and principal components analysis.

By placing constraints on some aspect of the Partial Least Squares procedure, which often are inappropriate, the analysis becomes one of the first-generation techniques. For example, if all factors are constrained to only one item (instead of multiple items) and modeled to demonstrate how one factor is affected by all the rest, the methodology becomes a multiple regression analysis.

E. *Results*

1. *Distinguishing Legal Events*

A list of attributed legal events and the scoring of the responses are found in Table 4. The overall correctness of responses in this part was a mean of eighty-one percent. Even taking into account the bivariate choice format, this is a positive assessment of accuracy in distinguishing between current Canadian and American legal events.

**TABLE 4 — KNOWLEDGE:
Distinguishing Current American and Canadian Legal Events**

SUPERB RECOGNITION: (> 90%)	
(98%)	Mike Tyson rape trial (US)
(96%)	Woody Allan/Mia Farrow custody dispute (US)
(96%)	William Kennedy Smith rape trial (US)
(93%)	Terms of new Constitutional Proposals (CAN)
(91%)	Anita Hill alleges sexual harassment (US)
(91%)	Changes in the landlord and tenant law (CAN)
HIGH RECOGNITION: (> 70%)	
(84%)	Leona Helmsley tax evasion charges (US)
(83%)	Plain language law (CAN)
(83%)	Gays in the military (US)
(80%)	Environmental Law/Statute (CAN)
(72%)	New bankruptcy law (CAN)
LOW/MODERATE RECOGNITION: (> 50%)	
(69%)	Keegstra "hate" case (CAN)
(66%)	Lindros contract arbitration (CAN)
(63%)	Lawyers' disciplinary hearings open to the public (CAN)
INDISCERNIBLE RECOGNITION: (< 50%)	
(49%)	New woman Chief Justice of Court of Appeals (CAN)
(44%)	Olympia/York bankruptcy problems (CAN)

When the responses are grouped according to accuracy in levels of "superb," "high," "low/moderate," and "indiscernible" recognition, further observations may be made. All of the American events (six) were identified with considerable accuracy, even though there were more "Canadian" events from which to choose (ten). Furthermore, most of the Canadian events were, in fact, local. It can be argued that the most highly-recognized events enjoyed the most publicity in the electronic media when compared with the other events.

2. Distinguishing Legal Terms

Table 5 contains the twenty-three legal terms which were presented for attribution to the United States or Canada, and also includes the corresponding indicator of accuracy of the results.

The number of total correct attributions ranged from a low of eight (one) to a high of twenty-two (one). Out of the 240 respondents answering this question, none correctly attributed all of the terms presented.

Table 5 demonstrates that Canadian undergraduate students have a conspicuously more accurate knowledge of American legal terms than they have of Canadian legal terms. Most of these terms pertain to the criminal and constitutional spheres.

**TABLE 5 — KNOWLEDGE:
Distinguishing American and Canadian Legal Terms**

AMERICAN		CANADIAN	
95%	State Trooper		
93%	4th Circuit		
91%	Death penalty		
91%	Uniform Commercial Code		
90%	Right to bear arms		
90%	We the People...		
89%	Fifth Amendment		
89%	Grand jury		
87%	Anti-trust	88%	Provincial Court
86%	Continuance		
86%	District Attorney		
79%	Public Defender		
78%	Felony		
74%	Misdemeanor		
71%	Due process	74%	Charter of Rights
		45%	Your Lordship
		40%	Notwithstanding clause
		29%	Peace, Order and Good Government
		27%	Preliminary Inquiry
		23%	Q.C.
		17%	Summary conviction

3. *Knowledge of General Canadian Legal Content*

In the next section of the survey, seven questions were posed to test the accuracy of the respondents' general legal knowledge. These questions draw upon basic knowledge of law or the legal system that a lay person might reasonably be expected to know.

Table 6 sets out the questions and the corresponding percentage of correct responses for each question. On the basis of these results, one concludes that Canadian lay knowledge of the law is generally deficient. The lowest level of knowledge lies in the respondents' awareness of constitutional content. Since the Canadian Charter of Rights and Freedoms³² was enacted sixteen years ago, the Supreme Court of Canada has delivered judgment in several hundred cases. Many of these decisions struck down legislation and were prominently covered in the media. It appears that these information sources have not succeeded in conveying to the lay person the substance of a cornerstone in the Canadian legal system — the judicial review of legislation. In this and other questions, one might conclude that the lay person is not merely unknowledgeable, but is instead fundamentally and definitively misinformed.³³

Of the 232 respondents attempting all the questions, no one correctly answered all seven. Several respondents were incorrect in all seven responses. Two of the seven questions had only two choices. The mean of correct answers was 3.1, which represents forty-four percent accuracy.

4. *Overall Knowledge*

When all three knowledge parts are combined, the total number of possible correct answers is forty-six. The aggregate across all parts ranged from twenty-four to forty, with 32.5 for the average (seventy-one percent).

32. See CAN. CONST. (Constitution Act, 1982) pt. I (Canadian Charter of Rights and Freedoms).

33. For a comparative study of the British system, see generally MICHAEL ZANDER, *THE STATE OF KNOWLEDGE ABOUT THE ENGLISH LEGAL PROFESSION* (1980).

**TABLE 6 — KNOWLEDGE:
General Canadian Law**

<p><i>NOTES: The correct answer is indicated in bold italics. The percentages of correct responses are also in bold italics.</i></p>		
A.	7%	The monetary limit in small claims court is: \$1000 \$2000 \$4000 \$5000
B.	35%	Which one of the following rights is specifically in the Charter of Rights: (a.) shelter (b.) legal aid (c.) security of the person (d.) property (e.) privacy
C.	75%	Judges: (a.) are elected to their jobs (b.) apply for their jobs through announcements in the newspaper (c.) are appointed by the government (d.) are interviewed and confirmed by the Senate
D.	63%	What happens to your property if you die without a will: (a.) the government gets everything (b.) your relatives all share equally (c.) your immediate family gets everything (d.) it is auctioned and the proceeds go to charity
E.	58%	Most criminal trials are jury trials: True False
F.	43%	A person charged with a criminal offence is the: (a.) defendant (b.) criminal (c.) accused (d.) suspect
G.	21%	Judges cannot rule that a law is invalid, but can only interpret and enforce it: True False

One should be mindful, however, that forty-one of the forty-six questions offered a choice of only two possible answers. The Canada and United States distinctions upwardly skew the overall assessment of accurate knowledge.

IV. CONCLUSIONS AND IMPLICATIONS FOR FURTHER RESEARCH

Legal information throughout North America has traditionally been the exclusive preserve of law schools. Non-lawyers do not give each other the Canadian Criminal Code³⁴ as a gift. Restricted public access to legal information has left virtually all knowledge of the content of the law in the minds of the lawyers.

There are, however, numerous rationales for a more robust and precise general lay understanding of the primary principles of law and the contours of the legal system. For example, it is neither possible nor wise to have a lawyer superintend every single action of a businessperson, although those actions might carry legal consequences. The lay person should possess a sound sense of when and how to consult a lawyer, and when one can rely upon one's own knowledge and skills.

What is the level of accurate legal knowledge in the lay population of Canadian society? Canada may be in a special position due to the confusing influence of, *inter alia*, mass entertainment media from the United States. This study shows that junior undergraduate students are somewhat capable of distinguishing between Canadian and American legal events and legal terms. They are, however, markedly more familiar with the American legal genre than with the Canadian legal genre. They may be even more seriously deficient in the broad strokes of legal content which are most likely to affect them.

There are two primary sources of "information" about Canadian law and the legal system. The first is coverage by the news media. This coverage is seldom offered by a journalist trained specifically in the law. The items highlighted are invariably in the criminal or other public domain because of their public impact, or their outlandish peculiarity or titillation, such as criminal proceedings against public figures. The business law student quickly learns that there are interesting and valuable cases other than those involving, for example, professional athletes and entertainers. Many students are prone to accord criminal law a predominant place in the legal system. The topic of sanctions, for example, reflects knowledge or understanding only of the common criminal law sanctions. Other areas and realities of law are overshadowed.

34. See R.S.C., ch. C-46 (1985) (Can.).

The other source of mass legal "information" is television programming, usually in the format of drama or situation comedy. A legal theme has been energetically worked into the television medium within the last five years. Such series have, despite the pretense to the contrary, very little legal content and information. Law is marginalized. Television series are entertaining take-offs of lifestyle in a law-related context, not vice versa. They are, as such, capable of conveying serious distortions of the context of law. Overall, the law and the legal system are heavily parodied by entertainment television.

Legal conclusions and legal clichés are the hallmark of news reports about legal events and even of entertainment television. Therefore, people without any legal education hold varying legal opinions prior to taking the course. Television is the only, or principal, window into the law and legal system for many people. As the broadcast media continue to intermingle news and showbusiness to a point where they are inseparable, the challenge is to combat the myth and fantasy most lay persons hold about law. Further research might show how difficult it is to dispel these myths about the law.

Backlogs in the courts show no evidence of abating. It is apparent that people place far too much faith in the mysticism and decorum of law and the legal system to resolve their manifold problems of life. An environment of information saturation does not ensure a broad base of public knowledge and understanding of a domain such as the law. With a low baseline knowledge of the law, there is a real risk that a society's citizens fail to accurately understand the implications of basic legal concepts and events.

For example, on October 30, 1995, residents of the Province of Québec were asked to vote on the text of a statute of the provincial legislature with respect to the question of their sovereignty and independence from Canada. This statute was not widely circulated and was drafted in formal legal terms. The Canadian public also reportedly expressed a popular opinion on the sufficiency of the federal Young Offenders Act,³⁵ and an appropriate regime of gun control, to select a few current examples. The public is continuously being polled by public opinion firms as to their attitudes about various laws. One must ask what the public really *knows* about those laws on which they comment.

The lay public may make imprudent decisions and the discharge of their civic expectations may be impaired due to their misunderstanding of the law which applies to them. Because they are unable to separate fiction from reality, or even understand fundamental legal principles and terms, they may have unrealistic expectations of lawyers and judges. With a penchant for public consultation, policymakers may now find that the quality of the lay contribution will be limited by the accuracy of the lay assumptions.

35. See R.S.C., ch. Y-1 (1985) (Can.).

Goethe is quoted as stating that “[t]here is nothing more frightful than ignorance in action.”³⁶ Canadian constitutional law itself has little respect for vagueness,³⁷ although citizens are mired in it. This study sought only to measure baseline knowledge in a limited respect and compare it to Canadian knowledge of American legal events and terminology. It does not consider how people *process* what they understand to be the law.

Knowledge of American legal events and terminology was markedly stronger among this sample of Canadian students than was knowledge of Canadian legal events and terminology. This phenomenon is somewhat akin to knowing the words of the national anthem of another country and not knowing those of one’s home nation, and in some cases, not even knowing whose national anthem it is in the first place.

36. Statement by Johann Wolfgang von Goethe, *quoted in* Cole’s Quotables, *Quote Search* (last visited Nov. 21, 1998) <<http://www.starlingtech.com/quotes/search.html>>.

37. See DAVID P. JONES & ANNE S. DE VILLARS, *PRINCIPLES OF ADMINISTRATIVE LAW* 58-60 (Carswell ed., 2d ed. 1994) (discussing the “doctrine of vagueness”).

