

**LEGAL SERVICES REGULATORY AUTHORITY  
SECTION 34 PUBLIC CONSULTATION**

**Education and Training**

**SUBMISSION**

**12 June 2018**

**SUBMISSION BY;**

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# SUBMISSION TO THE LEGAL SERVICES REGULATORY AUTHORITY

## Legal Pedagogy

### 1. INTRODUCTION

The legal services industry is currently facing the biggest set of reforms since the foundation of the State, a development which has not necessarily reached its terminus. Legal advice and legal representation can only be properly given by those who are qualified to give it. There will always be some lawyers who are better than others, but there must be an acceptable minimum of competence. It is for education and regulation to guarantee that minimum.

As Lord Nueberger, the then President of the UK Supreme Court, stated at a conference of the Bar Councils of Northern Ireland and Ireland, Belfast, *The Future of the Bar*, 20 June 2014;

*“It is essential that legal education takes into account, first the centrality of the rule of law; secondly the need for a very high standard of professional ethics (duties to society, the courts and clients); thirdly the need for lawyers to understand legal principles; fourthly the need to deal with practicalities of professional life; fifthly the need to allow for recent changes; sixthly, as far as possible, to cater for future. As for training, it is not only important that these factors are taken into account, but, particularly at a time of such fast change as the present, training after qualification, continuing professional development, is very important too.”*

This submission attempts to deal with some of Lord Nueberger’s enumerated essential factors, through the prism of legal pedagogy, by advocating greater use of a “toned-down” Socratic method of teaching law to compliment other modes of teaching.

### 2. THE SOCRATIC METHOD

- (i) Socrates (470-399 BC) was a Greek philosopher who, despite being considered one of the greatest and most important philosophers who ever lived, left no writings at all. Most of what we know about his life comes from the writings of his disciples, Xenophon and Plato, see Kraut, R. *“Socrates”, Encyclopedia Britannica*, (2018). Socrates engaged in questioning his students in an unending search for truth. He sought to get to the foundations of his students views by asking continual questions until a contradiction was exposed, thus proving the fallacy of the initial assumption. This dialectical practice became known as the Socratic method.

- (ii) In the 1870s the Dean of Harvard Law School, Christopher Columbus Langdell, introduced the Socratic method of teaching law, also known as the “case method”, to Harvard Law School. By the early 1900s, it became the teaching method that was common to law schools all over the U.S.A., see Farnsworth, E. (1983). *An Introduction to the Legal System of the United States*. 2<sup>nd</sup> ed. London, p. 16.
- (iii) The redoubtable Professor Kingsfield, played by John Houseman in the 1973 film *The Paper Chase*, still strikes fear in the hearts of those considering attending law school in the USA. “I ask you a question, and you answer it,” Kingsfield says, inaccurately describing his pedagogical approach as the “Socratic method”.
- (iv) The Socratic method is a tool used to engage a group of law students in a discussion of a particular court judgment, while using probing questions to get at the heart of the subject matter. It is a relevant framework for actively engaging law students with the critical thinking process to ultimately identify, and elucidate the *ratio decidendi* of the judgment.
- (v) In the Socratic method, the classroom experience is a shared dialogue between teacher and students in which both are responsible for pushing the dialogue forward through questioning. The teacher asks probing questions in an effort to expose the values and beliefs which frame and support the thoughts and statements of the participants in the inquiry. The inquiry progresses interactively, and the teacher is as much a participant as a guide of the discussion.
- (vi) The collateral benefits of this dynamic and interactive class room technique are considerable. Class discussions become lively and stimulating, encouraging students to prepare for class and engage in exciting and illuminating debates. Learning is a complex process acquired through a variety of experiences. Cooperation between teacher and student facilitates learning and the development of intellectual, communication, social, and emotional skills.
- (vii) The use of seminal, and current case law is an important cog in the Socratic machine.

- (viii) It has been said that the Socratic method of teaching law is a dynamic format for helping students to take genuine intellectual risks in the classroom, and to learn about critical thinking, reasoning, and logic, see, *The Socratic Method: What it is and How to Use it in the Classroom*, “Speaking of Teaching”, Stanford University Newsletter on Teaching, Fall 2003, Vol. 13, No.1, p.4. Clearly, such attributes are essential when dealing with the practicalities of professional life.

### **3. THE METHOD UNDER ATTACK**

- (i) The Socratic method has its critics. The most common complaint against the Socratic method is that it is cruel and psychologically abusive. Professors can be quick to criticise imperfect student answers, subjecting students to public humiliation. Even among students who do not speak in class, the possibility that they will be called on can be incapacitating. Another complaint focuses on what the method does not teach, namely, everything except for the particular skill of case-based legal reasoning, see Kerr, *infra* at para. 3(ii).
- (ii) It has been observed that the traditional Socratic method has been in decline in the U.S. in recent years, see Orin S. Kerr, “*The Decline of the Socratic Method at Harvard*”, 78 Neb. L. Rev (1999). Professor Kerr points out that the Socratic method now exists with various other pedagogies in contemporary law school classrooms, at p. 134 he states;

*“the Socratic method is simply one teaching technique among many, and it has both positive and negative aspects depending on the skill, personality, and purposes of the professor who chooses to use it.”*

### **4. THE TONED-DOWN SOCRATIC METHOD**

- (i) Criticism of the adversarial or aggressive aspects of the Socratic method has led to the development of more cooperative and collaborative versions of the method. Kerr, describes such a variation designed to reduce what he sees as the “authoritarian” nature of traditional legal education, see *supra* para. 3 (ii). In this “toned-down” version, the classroom retains a Socratic flavour in that the “quasi-traditional professor” continues to cold call students to discuss the case, but as Kerr adds at p. 123;

***“However, he (the quasi-traditional professor) has also introduced a series of reforms to the traditional method designed to eliminate classroom hierarchy. For example, he allows a “no hassle” pass, and does not allow students to raise their hands when another student is talking. This professor often calls on students by proceeding seat by seat down a single classroom row, which gives students prior warning of being called on and reduces student isolation....Finally, this professor frequently divides the class into groups and assigns each group the role of plaintiff, defendant, or judge. He then calls on students in each group to argue their position in front of class. This technique encourages active and collaborative student participation without focusing inordinate pressure and attention on one student alone.”***

- (ii) In *“The Socratic Method in the Age of Trauma”*, 130 Harv. L. 2320, (2017), Professor Jeannie Suk Gersen, observes at p. 2346;

***“Speaking in class – and being put on the spot – with regularity is an essential part of preparing students for careers in which they will need to speak and reason in real time, in both formal and informal settings. It is wrong to think these skills are relevant only to litigation or court. Myriad professional contexts, including ordinary meetings, presentations, and discussions of varying stakes, require these skills.***

***In recent years, I have attempted to foster an even more cooperative environment by mixing Socratic teaching with other modes of teaching that require student collaboration. I have assigned students to have discussions in small groups for a certain amount of time before having the larger class discussions. I have done more simulations of oral arguments, legislative hearings, negotiation exercises, client meetings, and other kinds of both formal and informal legal discussions....Over the years, the proportion of these “alternative” teaching modes has increased in my teaching, but the mainstay is still the Socratic method.”***

- (iii) Further at p. 2347, Professor Suk Gersen succinctly illustrates the benefits to students of Socratic pedagogy, notwithstanding its critics;

***“Attempting to buck tradition, critics now call for a more experimental pedagogy that better simulates legal practice.***

*Despite this well-developed consensus that legal education must change to become more practical, the appeal and relevance of Socratic pedagogy lies still in what Langdell first understood. First, that teaching through questioning simultaneously guides students and helps to develop their independence of mind. And second, that the “live performance” aspect of this teaching in which the student reasons verbally in class is really practice in the process of interpreting, making, and doing law. In other words, we shouldn’t count out the experiential nature of Socratic pedagogy.... More than ever, we must train diverse students to be professionals, citizens, and human beings who will have the skills not only to get the job done but also to surmount the great challenges for open discourse in a democracy.”*

## **5. THE FUTURE**

- (i) Professor Richard Susskind has written extensively on the future of law and lawyers. In his recent book, Susskind, R. (2017). *Tomorrow’s Lawyers – An Introduction to Your Future*. 2<sup>nd</sup> Ed. Oxford, p. xxii, he states

*“Wayne Gretzky, perhaps the finest ice hockey player of all time famously advised to ‘skate where the puck’s going, not where it’s been.’ Similarly, when lawyers are thinking about the future, whether about their law firms or law schools, they should be planning for the legal market as it will be and not as it once was. In ice hockey terms, I worry that most lawyers are currently skating to where the puck used to be. My purpose, then, is to show where that puck is most likely to end up.”*

- (ii) The metaphor is based on an expert knowing where a hockey puck is likely to be, given his knowledge of where it is and the principles governing its trajectory. Likewise for lawyers, a good lawyer in command of the facts and of the applicable law should, to a reasonable degree, be able to predict the outcome of litigation.
- (iii) Education and training in this jurisdiction should, *inter alia*, equip the law student, with the cognitive skills, to enable him/her to intercept the puck along its trajectory, not at its point of departure.

## **6. CONCLUSIONS AND RECOMMENDATIONS**

- (i) In LIT, I endeavour to foster the cognitive skills of my students, by mixing Socratic teaching with other modes of teaching that require student collaboration. Despite its critics, the Socratic method still has a role to play in legal education and training, and its use should be encouraged so as to enhance the legal learning experience in this jurisdiction.
- (ii) In fact, the Socratic method would go some way to meeting a number of Lord Nueberger`s essential factors. To paraphrase Lord Kerr`s statement in *Mallalieu v. Drummond* (1983) 1 All ER 801, the student having experienced the Socratic method will be able, at a minimum, to “*kill two birds with one stone*”.
- (iii) Finally, I return to hockey, and Wayne Gretzky`s advice to skate to where the puck is going. It is likely that there are a number of important targeted reforms, which can be put in place to intercept the puck – allowing legal education and training develop the necessary cognitive skills. I have addressed only one, the Socratic method of teaching. Legal education and training through open discourse can reinvigorate the legal profession, and thereby ensure our increasingly diverse and multicultural democracy continues to flourish. One small step on this journey would be the use of mixed teaching pedagogies, creating a transformative educational experience. To echo Professor Suk Gersen, teaching through questions, not answers, will allow students to use their imagination and courage to solve problems whose contours we do not even know yet.

**John R. Quigley,  
12th June, 2018**