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Globalization Of The Legal Profession

“Think Globally And Act Locally”

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<http://www.prep.com>
<http://www.lawschoolbound.com>
<http://www.prelawforum.com>
<http://www.prelaw.ca>

Introduction:

I graduated from law school in the last century. At that time the world was a different place. Since law is nothing more than a reflection (a form of snapshot) of society, the law was very different. Furthermore, law school was different. At that time law school was for the purpose of providing a basic legal education for a much more “provincial” (no pun intended) world. When I graduated from law school very few lawyers were members of the bar of more than one jurisdiction. At that time lawyers could practice law without knowing the law of any other jurisdiction.

Times have changed. Lawyers are now a small part of a much bigger world. A world that consists of many jurisdictions, different legal systems and clients with a need for legal services on an international level.

Canada, the United States and Mexico have entered into a comprehensive trade treaty called the North American Free Trade Agreement (NAFTA). For this reason alone it seems obvious that North American lawyers should have a basic fluency in the legal systems of all three countries.

Many of the European Countries have formed their own trade block commonly called the European Union.

These are examples of trade unions of countries that are close together. You may recall that in his book 1984, Orwell imagined a world of three distinct areas. We may not be far away from his hypothesis. In any case, lawyers of specific countries need to see themselves as part of larger units countries which have been bound together by agreements of trade, common culture or possibly the necessities of defense.

Law firms have responded. It is common for law firms to have offices all around the world. In fact many law firms see global expansion as a necessity. One Toronto firm gives its associates paid leave to study for the New York bar exam.

I encourage you to plan towards being a “global lawyer” and not just “a local lawyer”. It is easy to make the transition from “global” to “local”. It is not easy to transition from “local” to “global”.

I suggest that you need to think and plan in terms of both:

1. Where you will be admitted to the bar;
2. How your legal education might prepare you for a more global world.

Part I – Bar Admission – Your License To Practice Law – What You Are Allowed To Do

The world is composed of many countries with many legal systems. North America, Australia, New Zealand and the U.K. (to name a few places) are based on the common law system. But, more countries are based on the civil law system. In fact most of the European Union is based on the civil law system. In North America, only the province of Quebec and the state of Louisiana are based on the civil law system.

It would seem obvious that in an increasingly connected world that lawyers should:

- have a working knowledge of both the civil and common law systems;
- have the legal right to practice law in multiple jurisdictions

There are three ways that one may practice law in any jurisdiction.

1. As a permanent member of the bar giving advice with respect to the law of that jurisdiction. (Massachusetts lawyer giving advice on Massachusetts law in Massachusetts)
2. As a temporary or guest member of the bar giving advice with respect to the law of the guest jurisdiction. (A French lawyer giving legal advice **in Scotland** on the law of Scotland)
3. Not as a member of the bar but as a foreign legal consultant. In this case a member of the bar of jurisdiction A, will give advice on the law of jurisdiction A, while in jurisdiction B. (For example, a Toronto law firm establishing an office in New York which is restricted to giving advice on Ontario law. This is very common. A number of Toronto law firms have offices in New York.)

In North America, law school is intended to provide the academic qualification to obtain a license to practice law (bar admission). In most other parts of the world, law is studied at the undergraduate level. There is generally no expectation that law students take the further step of becoming a lawyer. Once one is admitted to the bar one (subject to continuing good conduct and character) has a right to practice law in that jurisdiction.

The legal profession has traditionally been protective of its turf. In other words, there has been a historical presumption (which is changing) that admission to the bar in a specific jurisdiction (say Massachusetts) would give you the right to practice only in that jurisdiction. Furthermore, those not admitted to the bar in a jurisdiction may not practice law in that jurisdiction.

1. Therefore The Easiest Way To Practice Law In A Specific Jurisdiction is to be admitted to the bar in that jurisdiction. One can be admitted to the bar in a jurisdiction either as:

- a non-lawyer

(John goes earns his J.D. at Harvard law school and then takes the Massachusetts bar exam)

- as a lawyer from another jurisdiction

(John has been an Ontario lawyer for 10 years and now wants to become a U.K. Solicitor)

Different jurisdictions have different rules depending on (among other things) whether one is already a licensed lawyer. In general, it is easier to be admitted to the bar of a new jurisdiction if you are already a lawyer in another jurisdiction.

The rules for Bar Admission For the following countries may be found at these places:

U.S. States:

<http://www.abanet.org/legaled/baradmissions/bar.html>

Canadian Provinces – Non- Lawyers:

<http://www.flsc.ca/en/lawSocieties/lawSocieties.asp>

Canadian Provinces – Lawyers or Foreign Law Graduates:

<http://www.flsc.ca/en/lawSocieties/lawSocieties.asp#foreign>

England Solicitors – Non-Lawyers:

<http://www.lawsociety.org.uk/becomingasolicitor.law>

England Solicitors – Foreign Lawyers:

<http://www.lawsociety.org.uk/becomingasolicitor/outsideengandwales.law>

2. Practicing As A “Guest Member Of The Bar”

The legal profession has traditionally been very protective of its turf. Until recently, it was harder for a British Columbia based lawyer to be admitted to the bar in Ontario than to be admitted to the bar of New York. The trend is towards a liberalization of the rules.

U.S. States:

Contact the state in question

<http://www.abanet.org/legaled/baradmissions/bar.html>

Canadian Provinces:

Admission to the bar in one province for all practical purposes gives one a national license to practice law. An Ontario lawyer can practice the law of British Columbia up to 100 days each year. Furthermore, an Ontario lawyer can now be admitted to the B.C. bar (or the bar of any other province which has signed on to the mobility agreement) without having to do bar exams again.

<http://www.flsc.ca/en/committees/mobility.asp>

England – Lawyers Already Admitted In EU Jurisdictions:

Note that England still has the historical distinction between a Barrister (trial lawyer) and a Solicitor (non trial lawyer, corporate, real estate, tax, etc) This discussion refers to how to become a Solicitor. To become a Barrister would take considerably more time.

European Union (EU) Lawyers

<http://www.journalonline.co.uk/article/1001080.aspx>

Explains European Establishment Directive (98/5/ce) for EU Member States:

S. 3 Allows European lawyers to practice both the law of their country and the host law

S. 10 Allows European lawyers practicing in a new country to simply be admitted to the bar of that country if they have practiced for 7 years.

EU Lawyers Establishment Directive 98/5/ce
(implemented in 2000)

Non-EU Lawyers:

Non-EU Lawyers (obviously including American and Canadian lawyers) may become English Solicitors by passing an exam called the “Qualified Lawyers Transfer Test”. In general terms a North American lawyer who has practiced in a “common law jurisdiction” (most of Canada and the U.S.) will be eligible to take the exam. The exam is not designed to test specific law. Hence, it is quite manageable. As you expect (since there is course for everything) you can take a prep course for it. I noticed one such course (I am not recommending just commenting) may be found at:

<http://www qltt.com>

For the complete rules you should refer to:

<http://www.lawsociety.org.uk/becomingasolicitor/outsideengandwales.law>

Non-Lawyers

There are three routes that one can take to become a “Solicitor” in England:

Qualifying:

- with a law degree
- with a non-law degree
- without a degree

<http://www.lawsociety.org.uk/becomingasolicitor.law>

3. Practicing The Law Of Your Jurisdiction As A Foreign Legal Consultant

The United States, Canada, Mexico - NAFTA

Although this is regulated locally, all regulations in Canada, the United States and Mexico must be within the rules established by Article 1210 of the North American Free Trade Agreement (NAFTA). Basically the rule provides cross-border mobility for the provision of legal services by lawyers. The basic principles are:

1. A permit to act as a foreign legal consultant in another country may be issued if:
 - the applicant is a member of the bar in the legal profession of his home country
 - the applicant is subject to discipline and regulation by the home country
 - the applicant is of good character
 - the applicant carries adequate insurance
2. Once the permit is issued the applicant may provide only on the law of the country where he has been admitted to the bar.
3. There is no requirement of citizenship or residence on the part of the applicant
4. The applicant may describe himself only as a foreign legal consultant.

Note that this rule does NOT give one the right to live in a country. In other words, it does NOT solve the immigration problem. What you can do is different from where you may live.

<http://www.dfait-maeci.gc.ca/nafta-ALENA/chap12-en.asp>

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EU Lawyers Establishment Directive 98/5/ce
(implemented in 2000)

Part II – Immigration Issues – Where You Are Allowed To Live

It is common for a Toronto lawyer to be admitted to the New York bar. But, having a license to practice law in a jurisdiction does not include the right to live in that jurisdiction. To be forewarned is to be forearmed.

Part III – What Does This Imply For Your Legal Education?

A complete list of U.S. and Canadian law schools may be found at:

<http://www.lsac.org>

The following comments about legal education, are nothing more than my opinions. But, here goes ...

Law school is NOT for the purpose of teaching you the law. Law school IS for the purpose of teaching you how to research and apply the law in an environment of change.

When it comes to the law, the only thing that is consistent is that it will change.

1. It is relatively easy to learn specific laws. It is more difficult to learn different legal systems.

Therefore, you should ensure that your legal education includes some exposure to different legal systems (both civil and common law).

2. There are many opportunities to achieve joint degrees while in law school. Although, some see these opportunities as controversial, I think you should consider them. You have to be at law school for three years anyway. Why not combine it with something else (allowing you to extend your undergraduate interests into law school)?

3. The Canadian law schools are certainly beginning to recognize the importance of being exposed to different legal systems. For example, if you were to attend McGill University in Montreal you would automatically earn both a civil law degree and a common law degree. Three Canadian law schools now have programs that offer both U.S. and Canadian law degrees. These programs exist in partnership with different U.S. law schools.

Examples of Joint U.S./Canadian law degrees include:

Osgoode Hall – NYU – Joint LL.B./J.D. program

<http://www.osgoode.yorku.ca/admissions/llbprogram/combinedjdlb.html>

University of Ottawa – Michigan State – Joint LL.B./J.D. program

University of Ottawa – American University – Joint LL.B./J.D. program

http://www.commonlaw.uottawa.ca/index.php?option=com_content&task=view&id=516&Itemid=133

University of Windsor – University of Detroit – Joint LL.B./J.D. program

<http://www.uwindsor.ca/jdlb>

An article discussing the merits of these programs may be found at:

<http://www.prep.com/LW.pdf>

and at:

<http://osgoode.yorku.ca/media2.nsf/83303ffe5af03ed585256ae6005379c9/e108170e7921e81285256f95005c0dd1!OpenDocument>

Part IV – Remember That Having A Career Is Different From Having A Life

I certainly encourage your interest in both law school and a legal career. There is no area of society that is not impacted by a law. Sooner or later every social issue becomes a legal issue.

There is much opportunity to combine your personal interests with your legal interests.

You will need to work hard to create opportunities in your area of interest. When you get out of law school, finding a job will not be a problem. Finding or creating a job that is consistent with your personal interests may be harder. NEVER move into an area of practice just because it is where you were offered a job.