

Macleans ranking Canadian law schools

by Alice Woolley

Is this a blessing or a curse? Law school rankings have come to Canada. Brian Leiter was hired by Macleans magazine to design measurement criteria, compile data and rank the schools. This year's ranking – the second that Leiter has done – has just been published at Macleans (here: <http://oncampus.macleans.ca/education/2008/09/11/ranking-canada's-law-schools/>). In many ways Leiter's rankings are a useful contribution. As he has suggested of rankings in the US, they may “unleash academic talent and ambition,” (Brian Leiter, “How to Rank Law Schools” (2006) 81 Ind. L.J. 47 at 52) and, as Macleans argues, they might provide prospective students with information about which law school they “will get the most out of.” The measures that he uses also appear generally legitimate. They have the virtue of being not (at least as far as I can imagine) susceptible to the law school gaming that Leiter and William Henderson have been critical of with respect to the *US News and World Report* analysis (Andrew P. Morriss and William Henderson, “Measuring Outcomes: Post-Graduation Measures of Success in the *US News and World Report* Law School Rankings” (<http://ssrn.com/abstract=954604>)). Having said that, I think there are some points that Leiter might not have fully taken into account in assessing Canadian (as opposed to US) law schools. There are also some weaknesses in the data points.

Half of a school's ranking comes from information about what happens to students after they graduate, and half of a school's ranking comes from faculty citations as identified through a search of Hein-on-line. With respect to students, Leiter measures hiring by elite law firms, “national reach” (students hired at firms other than the three which hired the most grads from a school), Supreme Court of Canada clerkships and graduates hired as academics. These are reasonable but incomplete measures. Supreme Court of Canada clerkships are particularly troublesome. Judges at the Supreme Court of Canada are required to represent the regions of Canada – 1 judge from the Maritimes, 3 from Quebec, 3 from Ontario, 1 from the prairies (Manitoba, Alberta and Saskatchewan) and 1 from British Columbia. The Court hears both civil law and common law matters, and sits in both English and French. As a consequence, clerkship hiring is based not only on academic (or law school) merit, but also on region of origin, competence in French and English, and (for one clerk per judge) competence in civil law. Not surprisingly, therefore, McGill and Ottawa – which teach in both English and French, and which teach both civil law and common law – have remarkably successful clerkship hirings. Equally unsurprisingly, the four prairie law schools – Manitoba, Alberta, Calgary and Saskatchewan – have had relatively limited success. Those schools combined have achieved less than half of the total clerkships of the University of Ottawa, even though combined having nearly twice as many students.

In general the output measures on students also do not sufficiently account for public sector hiring of law school graduates. While Supreme Court clerkships and faculty hirings are both public sector, they cover a miniscule proportion of total graduates from the law schools. This is an issue because public sector jobs in Canada (and in the United States?) are as or more desirable than elite law firm jobs, and may be as competed for by

law school graduates. In some Canadian cities (this was historically the case in Winnipeg, for example), entry level government jobs pay as well or better than private law firm jobs. Further, in some sectors high profile careers tend to start in government; a recent issue of Lexpert magazine noted that a “disproportionate number” of the corporate tax litigation bar “trace their roots to the other side of the fence as counsel with Justice Canada” (Lexpert Magazine, May 2008 p. 63).

The exclusive reliance on faculty citations in Hein-on-line as a measure of faculty output is also somewhat disappointing. While obviously faculty citations are an excellent measure, they weigh heavily in favor of law schools with older and more established faculty, and create considerable “stickiness” in the rankings given the limited lateral movement in Canadian law schools. The exclusive reliance on faculty citations is unnecessary in Canada. In contrast to the United States, every Canadian law journal is peer reviewed; every paper published in a Canadian law journal (even case comments and book reviews) has likely been reviewed blind by one or two academics expert in the field. This is often the case even for invited papers. As a consequence, the number of publications by an academic in such journals is a real measure of academic quality. Measuring the number of peer reviewed publications by faculty members in the preceding year would contribute usefully to the assessment of faculty accomplishment.

There are other points that can be made on the Leiter rankings with respect to his analysis of the data, the relatively limited stratification in Canadian law schools and the regional nature of many Canadian schools (in part see analysis here: http://utorontolaw.typepad.com/faculty_blog/2008/09/new-macleans-ra.html and here (in the comments): <http://oncampus.macleans.ca/education/2008/09/11/ranking-canada's-law-schools/>). My final observation would simply be to ask: what is the point of this exercise? Is it to drive academics to produce more scholarship? Is it to provide students with a better indication of which law school they should attend? Is it to provide elite law firms with information as to which school to hire from? Different groups may perceive the usefulness of these rankings differently. For instance, a junior academic is likely to feel limited motivation from them; a publication this year is not likely to make a material difference to a school's citation performance for several years, perhaps even many. A prospective applicant could legitimately question whether knowing the outcome for the top few students – those going to elite law firms, to the Supreme Court or into academia – in any given law school is all that useful. That student may be more interested in knowing the total placement rate for students upon graduation. While the University of Calgary Faculty of Law did relatively well in the elite law firm category, applicants may be more interested in knowing that last year 99% of our graduating class found articling positions. As a Faculty we are certainly prouder of that statistic than of the elite law firm statistic used by Leiter.

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