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eLitigation – Training Future Litigators for the Profession They Will Join

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In March 2020, the COVID-19 pandemic changed our legal world in a way no one could have imagined. Our courthouse went from a beehive of litigation activities to a silent graveyard. Practice directives containing emergency measures were issued and activated to deal with the change. Our civil litigation system that has historically relied on an in-person process to undertake almost every task – from the filing and service of litigation documents to routine chambers applications and trials – suddenly moved online.

The legal profession was forced to adopt technologies to address administration and litigation needs at an unprecedented pace. The COVID-19 pandemic radically changed the way we practice and conduct litigation, and it appears from every indication that the change is here to stay. For law schools entrusted with the “sacred” duty of educating and training future lawyers, the most noticeable response to this change was a quick transition from in-person to online (or hybrid) methods of instruction. However, it should go beyond that to include a reform of the existing curriculum to adequately prepare law students for the legal profession in a post-COVID-19 world. As a civil litigation professor with a background in legal technology, my response during this crisis was to develop a new course designed to train future litigators with skills and competence to commence and conduct litigation electronically, and with minimal in-person contact. Welcome to Law 693 – eLitigation at the University of Calgary Faculty of Law!

The ‘Old [Law] School’ Curriculum

The legal profession is traditionally conservative and *naturally* resistant to change. The institutions that train our legal professionals—including the law schools—are part of the resistance. Canadian law school curriculums, which were outdated even before the COVID-19 pandemic, continue to be touted as relevant. In 2014, [Dean Ian Holloway](#) wrote a very important piece in the *Alberta Law Review* titled “[A Canadian Law School Curriculum for This Age](#)”, in which he noted a fundamental problem with legal education in Canada as evident from the state of Canadian law school curriculum. Highlighting this problem, he stated:

The problem, though, was that the lives of law schools in Canada were increasingly divorced from the realities of everyday working lawyers. The breach was never complete, but less and less did law schools use as their guide for innovation the extent to which it better prepared their students for the profession they were about to join. (at 789)

Holloway was of the view that legal education in law schools should be aimed at adequately equipping law students for the legal profession they will join upon graduation. To meet this

objective, it is important to consider the state of legal practise today, to be able to predict (with a high degree of certainty) what that state will be tomorrow, and then to modify and adapt the existing curriculum to equip students accordingly. This is further evident from the fact that the legal practice is changing at a very fast pace. The law school curriculum must keep pace, especially in the light of the drastic change that has been thrust upon the profession by the COVID-19 pandemic, and that will continue to be thrust upon the profession even post-pandemic.

To be clear, technology is changing the practice of law and it will continue to exact the most fundamental change in the history of the profession, a greater change than from any other force that we have previously seen. Even the most extreme legal tech sceptics would agree that the fallout of the COVID-19 pandemic will enshrine systemic changes that will impact the relationship between technology and the administration of justice. Technology is changing and will continue to change the practice of law, especially in the area of litigation. The growth of information technology and its forced incursion into litigation practice by the COVID-19 pandemic has necessitated a changed approach to our teaching of civil litigation at the University of Calgary.

The eLitigation Course

The eLitigation course at the University of Calgary Faculty of Law was designed in response to the COVID-19 pandemic and the social distancing realities that came with it. But more so, it is designed in line with the [Calgary Curriculum](#) which places our law school at the forefront of innovation in legal education in North America. The eLitigation course seeks to introduce students to the practice of litigation in the era of physical distancing. The intent is to develop the knowledge and practical skills necessary to initiate and conduct litigation using electronic technology, and to foster specialized competence in the commencement and conduct of civil proceedings virtually. The content of the course includes electronic filing and service of litigation documents (eFiling/eService). By the end of the course, the students should develop some expertise with the use of the Federal Court eFiling system and many other provincial court eFiling services.

A substantial part of the course will cover the conduct of electronic discovery and the exchange of documents relevant to litigation (eDiscovery). We will rely on legal industry professionals, especially in the field of electronic discovery, to train the students on the conduct of document discovery in a digital environment. We are currently reaching out to major Canadian eDiscovery firms/service providers to discuss possible summer studentship/internship opportunities for the students to further their practical knowledge and experience in eDiscovery.

The scope of the course will also cover pre-trial questioning/examination of parties and witnesses using virtual technology (eQuestioning) as well as the conduct of hearings/trials virtually using electronic technology (eHearings/eTrials). The course will consider substantive and procedural laws (and related jurisprudence) relevant to litigating in a digital environment. It will also examine professional responsibility issues related to litigation in this environment. In line with our law school's experiential approach to legal education, the course will present a structured hands-on training designed to familiarize students with legal and other technologies

relevant to litigating in a digital environment, including artificial intelligence technologies used in eDiscovery document review, and will culminate in virtual mootings (eMootings) conducted by student teams before a sitting judge or a trial lawyer.

The practice of law and litigation has changed. The teaching of law and litigation must also change accordingly. As law teachers, we must train our students for the profession they will join (and not the one we joined), one which will be radically different from the one we joined. It will be an innovative legal profession built on legal technology.

An earlier version of this post originally appeared on [slaw.ca](#) [here](#).

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