

## **The contribution of training and education to the identity of the legal profession**

*Training conference, 25-27 September, speech of CCBE President, Colin Tyre QC*

### **Introduction**

I would like to begin by offering my congratulations to Julian Lonbay and to the CCBE's training committee for organising such an excellent conference as we have had over the last day and a half. It is rare to bring together experts from all stages of legal education and training, and I think it has been hugely successful. All too often, the two branches of the legal establishment do not speak to one to another enough and this has been particularly successful demonstration of why it should happen more regularly.

For my contribution today, I propose to address you briefly on the location of legal education and training within the wider perspective of the future of the legal profession in Europe. And naturally in doing this I shall adopt *le fameux plan français* and divide it into two parts. The first is an overview of the identity of the legal profession as it stands at the moment. Secondly, I will look at the contribution to the identity of the profession of legal education and training which, of course, itself naturally falls into two sub-sections; being professional training on the one hand and academic education on the other.

### **The identity of the legal profession**

There are profound changes across Europe in the perception of the role of lawyers. More and more, lawyers tend to be seen as a kind of subspecies of businessman. We see this from various angles. We see it coming from the central authorities: the European Commission, for example, in addressing competition issues, tends to see regulatory aspects of the legal profession as restrictive practices. It sees professional secrecy and confidentiality not as an essential guarantee of independence but as a competitive advantage for lawyers over other types of business. This is the perception of others which we are facing.

The Services Directive, which is about to come into force, addresses lawyers along with everybody else as a type of provider of a consumer service rather than something that is identifiably different. We have heard already this morning of the perception here in Poland that giving legal advice is something which should simply be permitted to anyone who feels like going ahead and registering in order to do it. Where is the added value of being a qualified lawyer?

And we see this not only from outside but from inside the profession too. Many lawyers themselves have this perception. A few weeks ago, in connection with a new initiative which has been launched by the competition authorities in the UK looking into rules of the legal profession, a senior partner of one of the large law firms in

Scotland was quoted in the press saying that he welcomed this initiative to enable lawyers to compete on a level playing field with *other businesses*. My instinctive reaction to that is that this individual has forgotten what it is to be a lawyer.

Or, alternatively, is he right? Is the legal profession nowadays simply a subset of business? What is a lawyer? What is the difference between a lawyer and a businessman? These are questions which are coming sooner or later to every member state in Europe. And we have to ask ourselves whether there should continue to be an identifiable profession of lawyer which is separate from other types of profession, or business, or other means of earning a living.

And it seems to me that if, like me, you think the answer to that question should be yes, then the solution lies here in legal education and training. If the legal profession is to survive as such, then it must, in my view, be through appropriate education and training. I want to look at the contribution which each of these can make in turn, taking them the opposite way round and beginning with the question of professional training.

## **The contribution of training and education**

### *Professional training*

If we are to produce lawyers who understand what it is to be lawyers, then the training must focus, it seems to me, on the values and the knowledge and the skills which are central to being a lawyer, and especially on the values. We spend a lot of time in our discussions with the external authorities persuading them, and indeed we spend a lot of time persuading our own members, of the need to focus on the core principles of the profession:

- the independence of the lawyer in all of its various aspects - independence from the government, independence from the client, independence from other influences;
- confidentiality and professional secrecy;
- the understanding of conflicts of interests in the various guises in which that may arise in the course of carrying on business;
- and beyond those, what one might call "the dignity of the profession": in other words, the personal integrity of the members of the legal profession, creating the mutual respect and mutual trust which only comes from confidence that when you are dealing with another lawyer you can be sure of his own personal integrity.

These are the issues which I suggest separate us out and must continue to separate us out from somebody who professes to give legal advice in the bar at night because he has read a few books on law or, more likely these days, has visited a few web sites and discovered by using Google and Wikipedia what the answer is to a particular problem of, say, family law.

We have to be able to justify to people that they should continue to use lawyers, as opposed to using shops or multi-disciplinary practices which happen to offer legal services along with everything else. Such a preference is no longer automatic, and legal training, in my view, in order to support our argument must focus upon the core values of the profession.

Knowledge is the second category of “outcomes”. I don’t want to spend time on that. We have debated at great length today and yesterday what knowledge is necessary in professional training. It is obviously essential that it be founded upon the core values and, if I may, I would refer you to what we are proposing by way of outcomes in relation to knowledge in our draft recommendations which I hope will be adopted in due course by the Plenary Session in November.

One point which I do wish to mention, however, is the cross-border aspect. Not every lawyer will in practice deal with cross-border issues. Perhaps the vast majority will not. But it is important that there should at least be an awareness on the part of all lawyers that there is a possible cross-border aspect. They should at least have knowledge of how to obtain appropriate advice in other member states and how, if necessary, to provide services in a host state which is not their own.

The third element of “outcomes” is skills. Again, I don’t propose to take time on this. We have discussed this and Julian spoke about it yesterday in the context of the recommendations. If I may, however, I would like to focus on two aspects of skills training which seem to me to be central to the profession of lawyer. One is the ability to present an argument or a point of view coherently and persuasively on behalf of the client, and I think that this is a skill which should not be regarded as restricted to lawyers who spend time on their feet in court. It should be shared by every person who presumes to call themselves a practising lawyer. It is in my view a core skill to be able to present a point of view forcefully and intelligibly on behalf of a client.

The second critical aspect, in my view, is the ability to put into practice the entitlements and rights of a particular client. It is not enough to be able to tell someone “Well, this is what you are entitled to, this is your right.” The role of the lawyer is to achieve that entitlement, to put the client into the position in practice which the theory of law says they ought to be in. It seems to me to be absolutely essential for legal training to equip the day-one lawyer to be able to fulfill these functions on behalf of their clients.

So in summary, for day one outcomes, what is essential is an understanding of what it is to be a lawyer rather than merely having a knowledge of what the law is in order to tell someone what the answer is to a particular question. The question which then arises is: how do you assess that outcome? How do you assess whether a trainee has achieved it? That is a matter for another day; too big a topic for me to attempt to cover in 15 minutes; perhaps, the topic of the next CCBE training conference?

## *Academic education*

So much for professional training. Going back a stage to academic education, I must emphasise that it is not for the CCBE to interfere in university education or to attempt to tell universities what they should or should not be teaching, or how they should be doing it. All I would propose to do is offer a personal observation on the contribution which universities might make to the training of a practitioners, to achieve what I have suggested has to be achieved as part of their education and training, appreciating of course that the universities have other priorities too. They are educating people studying for a law degree who are not intending to go into practice, and that law degree has an intellectual value beyond simply producing practitioners.

But it is part of the function of the universities to assist in the production of practitioners. What should be their contribution to the formation of a lawyer? To take up a point which has already been made today both by Pierre Lafont and in one of the questions by Audrey Guinchard, how do you get students to do something where they can't find the answer by using Google? In my view the answer is in accordance with what has been said already: if the university training in law is to have an added value, there should be an emphasis on legal analysis; on the structure of the legal system; on the contexts of the legal system, such as the social context and the economic context; and on in depth examination of issues which underlie the practical subjects such as contract law, property law and criminal law. By that means, the prospective lawyer understands that the law does not just consist of a set of rules which you can learn but which become outdated as the government passes fifteen new tax laws in the course of a year and makes you wonder what the point was of learning it in the first place. That is not law. Law is not just a collection of separate and discrete subjects. It is an organism which evolves. And so far as the lawyer is concerned, there is a further element. What Amanda Fancourt had to say yesterday about teaching ethics, if I may say so, was music to my ears. The sooner the prospective lawyer is introduced to this side of legal practice in the context of learning the law as a whole, in my view, the better. And the more likely it is that as they progress into the profession they will not forget what it is to be a lawyer, and will not confuse the practice of law with a type of business which happens to consist of telling people what the law is and of drafting the necessary documents.

In all of this, I believe it is important, and this again is a personal view, that practitioners should participate where possible in university training and that university teachers should participate in practical training. I think that sort of interaction is not only desirable but essential in turning out day-one lawyers who understand what it is to be a lawyer.

## **Conclusion**

The legal profession today does not exist by right or by some sort of immemorial privilege. It has to justify its continuing existence. It has to have something which

other people do not have, and that cannot be just a learning of laws; it cannot be just a set of business skills. It has to include an understanding of the values underlying the legal profession and why the practice of law is different. That is what I would suggest one needs to instill from the outset of learning law. Pierre Lafont described this earlier with regard to France as a distant horizon, but I don't think that France is lagging behind others. It may be that the solution is still only on the horizon, but the problem - the challenge - is here, now, and facing us across Europe. We have to make progress as soon as we can towards that horizon.

The future of the legal profession, not just for the particular individuals who will be practising but for the profession as a whole, lies in your hands.