

A hollow threat

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Globe and Mail Update

The recent announcement of the merger of one of Canada's national law firms Fasken Martineau DuMoulin LLP with UK firm Stringer Saul LLP to create the first full-service integrated Canadian-UK law firm means that the Canadian legal services market is now in play. The announcement is a tacit concession that the market place and client base for major legal services is global. The Law Society of Upper Canada (LSUC), the profession's leading self regulatory body, needs to either get with the program or risk "hollowing" Toronto out as a major professional services centre.

Why is it so much easier for a Canadian who opts to broaden their professional educational experience through international exposure and obtain an LLB degree abroad in the U.K., home to world renowned law schools such as Oxford and Cambridge, or to gain admission to the New York State Bar than for foreigners to be admitted to our Law Society? Wall Street Firms realize that sustaining New York as a world class professional services centre is a brutally competitive business. It necessitates recruiting the best and brightest from an international talent pool where they aggressively compete against the Canadian "national" firms for top-tier graduates from this country's law schools. Admission to the New York State Bar requires successful completion of a rigorous uniform exam under the auspices of a neutral state supreme court that encourages applicants with LLB degrees from accredited Canadian and UK law schools to compete for admissions on an equal playing field with their American counterparts.

The Federation of Law Societies of Canada (FLSC) acts as national clearing house in accrediting foreign law degrees to Law Society standards through its National Committee on Accreditation (NCA). Our accreditation standards are so rigorous that Canada in effect runs a closed shop designed to ensure that a well protected insular national market for legal services isn't threatened by professionals with internationally recognized designations.

No Canadian law school requires a baccalaureate degree as a condition for admission. The LLB is essentially an undergraduate professional degree in all British Commonwealth countries and the stand alone academic criterion for admission to the Law Society of Canada. Nevertheless, the starting point for evaluating all UK applicants into Canada is whether they have an honours baccalaureate as a prerequisite to their LLB. Moreover, a foreigner's undergraduate degree is evaluated to determine if it's in "pre law" of which there is no recognized disciplinary course of study in a Canadian or UK university. The foreign LLB degree is evaluated on the basis of a three-year program of study although students who do have baccalaureate degrees can obtain their LLB in two years in the UK in recognition of their previous academic achievement; a consideration that Canadian law schools continue to turn a blind eye to despite the final two years of study consisting of an overwhelming amount of optional courses.

Canadian law school students are required to take six essential courses that constitute the foundation for the Canadian common law legal system as the sole academic criterion for bar admission. UK degree applicants must demonstrate a high level of proficiency in 14 Canadian law courses; one being taxation

law which no student at any Canadian law school is required to take. The NCA recognizes Canadian LLB degrees on the basis of uniform law school accreditation standards. It refuses to recognize any UK law school as being accredited to Canadian standards. It insists on evaluating every applicant on the basis of their entire course of studies and individual grades. Oxford Dons take note that the NCA is rendering a learned second opinion.

The evaluation is done by a committee without any recognized professional expertise in institutional accreditation and course/curriculum evaluation. The applicant is left to their own devices with no clear guidelines in preparing their application. The NCA has the exclusive right and absolute discretion to decide whether the applicant must attend a law school in Canada or be granted the privilege of writing challenge examinations to demonstrate competency in courses deemed necessary for accreditation. There is no uniform standard for challenge examinations. There is no right of hearing and no right of appeal of an NCA decision that has a dramatic impact on a person's ability to earn their livelihood.

These systematic barriers to foreign accreditation need to be torn down to enable Canada to compete for the best and brightest of the global legal talent pool. Recognizing the perils of leaving it foreign accreditation to its self regulated legal profession, the United Kingdom is creating a Legal Services Board to assume this responsibility. The Province of Ontario, the locus of choice for the great majority of foreign trained professionals, has recently enacted a Fair Access to Regulated Professions Act and created a Fair Registration Practices Commission that will be empowered to break down the systemic barriers inherent within our National Committee on Accreditation process. The Law Society of Upper Canada demonstrated the extent to which it's still wearing regulatory blinders by petitioning for an exemption, which the government in its wisdom refused to grant.

Law firms interested in maintaining Toronto as a professional services centre now need to aggressively support this legislation by forming a coalition to save the legal profession from itself and they need to do so in a hurry. The deafening sound of the next hollowing out can already be heard.



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