

Predictive Validity of the LSAT: The Jury's still out

THE COMPLEX ISSUE OF LAW SCHOOL ADMISSIONS

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Should getting in be half the battle?

Every year over 25,000 applications are submitted to the 16 Canadian common law schools by apprehensive individuals hoping to gain access to a legal education. Law school applicants have different reasons for pursuing a career in law, whether or not that includes becoming a lawyer, but they all have one obvious thing in common, their fate is in the hands of law school admission committees. The law school admissions process in Canada, much like in the US, can be a very arduous ordeal for incoming students. Many students apply to several law schools in the hopes that one of them will accept the applicant as "worthy" of studying the law. Law schools have different policies for evaluating the merit of applicants, but most rely on the procedures adopted in the US. The tendency for schools to rely strongly on undergraduate grades and the Law School Admissions Test (LSAT), the disputable predictors of academic success in law school, only begins to unveil how remarkably complex the admissions process can be. The problem, on the surface, seems simple – law schools select the candidates they believe will make the best law students. Upon further analysis, however, the intricate details of exactly *how* applicants are selected, what it is that makes them the "best" and whether or not the system is "working", pose many more questions than there are answers.

To be admitted to a Canadian common law school, applicants need at least 60 credits of any undergraduate degree, but most schools show preference for those students who have completed their full degree. Almost all applicants will have also taken the LSAT, administered by the Law School Admissions Council (LSAC).

In 2004-2005, there were 145,258 tests administered to hopeful candidates across North America. Most schools give the LSAT a weighting of anywhere from 30% to 70% to assess the candidates application. So, it is an important factor for many aspiring lawyers, but since it is after all a standardized test, many applicants have a hard time getting a score in the 85th percentile, which is considered a good enough score, so as to not hinder the applicant's chances. As John Richardson, a lawyer and instructor of an LSAT preparation course in Toronto, claims in his reputable book, *Law School Bound*, "your dream of a career in the law may be shattered" by "scoring badly on the LSAT." So, in fact, this admissions business is serious, the LSAT can be a barrier to one's future, so a detailed analysis of the test's value is necessary.

The LSAT was first administered in 1947 in the US, when LSAC began in an attempt to standardize admission procedures in university law schools by allowing for a "fair, objective assessment of all applicants." In 1969, the test crossed the border to Canada. Over the years, the LSAT has evolved in content and in the scoring scale, but since 1991, it has undergone few alterations. Five 35-minute multiple choice sections, four of which contribute to the test taker's score, comprise this half-day standardized test. A raw score is obtained based on the number of questions answered correctly; then a scaled score from 120 to 180 produces the test taker's score relative to all the other LSAT writers during that particular test. The categories of questions include Logical Reasoning (2 sections), Reading Comprehension (1 section), Analytical Reasoning more commonly called "Logical Games" (1 section) and an unmarked Writing Section, where the test taker argues one of two options. According to the makers of the test, "the LSAT is designed to measure skills that are considered essential for success in

law school: the reading and comprehension of complex texts with accuracy and insight; the organization and management of information and the ability to draw reasonable inferences from it; the ability to think critically; and the analysis and evaluation of the reasoning and arguments of others.”

It is a misconception that someone can't study for the LSAT, certainly several LSAT prep courses rely on the falsehood of this claim. LSAC, itself, discourages people from taking prep courses, but they do encourage future test-takers to practice by purchasing copies of their past tests, which they market for \$8 US a piece. An LSAT prep book is usually at least \$40, while a prep course ranges, with the most expensive one at Kaplan currently costing \$1175.93. So, if test takers can't study for the test in advance, there is a lot of money being wasted attempting to accomplish the impossible. There is also a thought that if studying can improve one's score, then the test is not “a measure of intellectual capabilities” as it claims to be. As a consequence, several studies, most funded by LSAC, have been done to determine whether or not the LSAT is an adequate predictor of “success” in law school. Not surprisingly, there are inherent flaws in the methods and applicability of these studies.

The LSAC conducts correlation studies annually which are only released to the schools that choose to participate. Their alternate website, LSACnet, however, offers a variety of research reports, though for some reason, which LSAC wouldn't comment on, correlation reports circa 7 years ago still haven't been “published” on the website. Some of their papers focus on the correlation between a student's LSAT score, grade point average in undergrad (UGPA) and his/her academic success in law school. On average over several studies, the LSAT appears to be a low to moderate indicator of academic success in law school. Interestingly, the trends also show that consideration of the LSAT and UGPA combined offer a better predictor of success in law school. When these are the only two indicators ever analyzed, one wonders if there are others that could even be better at predicting this “success”?

Success, in the LSAC sense, is measured by law school grades. A student at the top of his/her law class is more “successful” as he/she will acquire a better, higher paying job and be more successful in life – presumably. But how do we measure success? It's really an individual term. Success in law school could mean grades for one student, mooted awards for another or prizes won for yet another student. And a successful law career is also debatable and could include, but is not limited to: income, prestige of firm one works for, number of clients, honours, maintaining morals or conversely, not being a lawyer altogether.

Unfortunately, when LSAC studies are conducted, they tend to focus on students' first-year law school GPA, which they justify by the assertion that first-year curriculum is considered to be equivalent in all schools. Clearly, there are some blatant assumptions with this theory that need to be revealed. First-year law is a transition period for many students, especially for those unfamiliar with substantial reading, heavy studying or an intellectual atmosphere. So, performance during the first year of law school will be biased against late bloomers who may achieve great academic success in senior years. Data taken from the first year also assumes every professor teaches the same, gives the same lectures, offers the same amount of help to students and grades his/her papers equally. With 16 common law schools in Canada and 191 ABA-approved law schools in the US, this is highly unlikely.

Confidence in the validity of correlative studies is an issue impossible to ignore. W. Wesley Pue, a law prof and Dawna Tong, a Ph.D. candidate at the University of British Columbia writing for the Osgoode Hall Law Journal state that “correlation studies tell us remarkably little about either average student ability or quality of education.” For instance, a weak correlation between LSAT scores and law school GPA might unveil that the law school admissions committee failed to select talent that year by limiting their decision to LSAT scores alone or completely the contrary, that the admissions committee was superb in selecting potential talented students, despite what their LSAT score may have been. Though the reliability of the LSAT has been questioned on numerous occasions, it still is heavily weighted by law schools, who claim it tests law-school required skills.

Examination of this statement provides intriguing results. To answer whether the LSAT tests skills required in law school, it is essential to ask the experts – the law students. So what skills help to survive

the rigours of a law degree? "Organization, time management and the ability to read a large volume of cases over a short period of time," boast five first-year law students at UBC. A University of Ottawa first-year finds the LSAT "not really relevant to law school itself", focusing on the fact that techniques from the Logic Games section are never employed in any of his classes. Though the UBC students say the LSAT offers "totally untransferable skills", they reason that LSAT Reading Comprehension passages develop the skills required to wade through lengthy cases and Logical Reasoning helps untangle complex arguments. So, though it probably pains law students to admit it, the LSAT did test them on *some* skills parallel in law school.

And what about the time pressure? It is widely recognized that anyone could obtain a perfect LSAT score if given unlimited time, but with approximately 28 questions in 35 minutes, test takers struggle to attempt every one, let alone answer them correctly. A 2004 study supported the notion that test-taking speed is both crucial to the LSAT and to law school exams. The UBC law students, however, say that the time-pressure of the LSAT is unrealistic and law school exams don't require that level of test-taking speed to achieve a good grade. Most of their exams are written essays worth 100% and addressing one topic as opposed to 28 different ones. "You just don't face the same time constraints in law school," confirms the Ottawa law student.

Maybe we are asking the wrong question though. The LSAT is currently a gateway to law school which opens the door to becoming a lawyer, so shouldn't we actually wonder if the LSAT tests skills required by lawyers? We could immediately assume the answer is "no" as law firms do not ask for disclosure of LSAT scores to evaluate a law grad for employment. Steven Black, a Borden Ladner Gervais lawyer in Vancouver finds his practice depends on the ability to manage his time, juggle several projects simultaneously and think on his feet to construct creative arguments in order to be productive in his law firm. And the role of a trial lawyer demands "the ability to assimilate and understand information in a quick manner and communication skills," says Rose Keith, also a Vancouver lawyer. We can recognize that some of these skills agree with those supposedly tested on the LSAT, but it important to note that there is a reason why they call it "law school" and not "lawyer school". As Ms. Keith explains, "law school simply gives you the basic skills for becoming a lawyer, teaches you how to research or where to find information. Skill as a trial lawyer is only gained through experience."

Among most students struggling with the LSAT, admitted to law school, or waiting to get in, the general consensus appears to be consistent with the Ottawa student's beliefs that "the LSAT is really a tool designed to eliminate candidates from law school. [It] is nothing but a hurdle that must be overcome, but it doesn't really help you in terms of law school." A hurdle, a barrier to one's future, nothing more. It really doesn't seem fair, does it? Then what's the motive for using LSAT scores as indicators of law school "success", other than to intimidate hopefuls?

To answer this we need to consider the goal of law school admissions committees, which presently in most schools is to find the best potential law students likely using the least amount of energy. That's their bottom line – get the good students and make sure they get good jobs. All is well for those who fit the mold, but what about those who cannot afford LSAT prep courses or minorities that struggle with biased language used on the LSAT, like the words "tuxedo" or "regatta"? Couldn't they make good lawyers too? Well, according the current policies of many schools, if the grades and the LSAT scores don't cut it, then the answer is no, those applicants make for undesirable law students. Where's the justice these schools are supposed to be instilling in their students? What are they demonstrating to accepted students, that they've got what it takes? To rejected students, that they're just not good enough?

But there is another, yet-to-be-discussed player in this game – the legal profession of Canada. The students want into law school, the law schools want the "best and the brightest", but that's not enough. Law admissions committees have the responsibility of shaping the Canadian legal profession. The students they deem worthy of legal education will be the future lawyers, judges, law policy writers, and workers in law-related fields. Law schools are essentially choosing who will serve the Canadian public,

legally speaking. If Canadian lawyers “seem callous and uninterested in justice [. . .], could it be that we are screening for exactly that sort of person?” asks Richard Delgado in a 2001 study.

But there is hope yet, the admissions process is evolving. Canadian schools are stating that they wish to achieve diversity in their student bodies, and some are adapting their admission policy accordingly. The goals of law schools are changing too. No longer do they simply wish to select applicants who will have a reasonable chance of doing well in law school, but they also desire only candidates who will contribute positively to the Canadian legal community; the achievement of this new goal will definitely require more effort on the part of admission committees.

According to the Ontario Law School Application Service (OLSAS), schools are now using autobiographical sketches of non-academic factors such as employment, extracurricular activities, awards, achievements outside of academics, community involvement and membership with professional associations as criteria for admissions. UGPA and LSAT scores, however, still make up the bulk of the decision. The University of Calgary, McGill University, the University of Ottawa, the University of Toronto, Queen’s University, the University of Windsor and Osgoode Hall Law School (York University) all report that they utilize “holistic” policies when it comes to law admissions. This basically translates to avoiding the use of a “cut-off” UGPA or LSAT score, below which admission to their law school is impossible and usually to escape from traditional LSAT/UGPA weightings. They assess all the above criteria in addition to grades and LSAT, which could lead to applicants that meet the minimal academic trends in that year’s applicant pool not being admitted, whereas an applicant with lower UGPA/LSAT may be admitted on the grounds of exceptional non-academic criteria. Whether or not this produces a first-year class more prepared for law school and more easily adapted into the legal profession upon graduation is not the question. The reason for such admission changes is to increase the diversity of the school and the Canadian legal community in addition to providing more individuals access to a legal education.

All Canadian law schools also maintain several applicant categories. Though most applicants qualify for the “Regular Applicant” category, there are several that are assessed under the categories of “Mature”, “Aboriginal”, “Discretionary or Access” and “Special Circumstances”. The available seats for these applicant categories are much fewer than the “Regular” category, but in general the number of applicants to these categories is also significantly decreased. So, proportionally, schools are opening their doors to students who fit these categories and may not be competitive in the “Regular” applicant pool. The “Special Circumstances” category is reserved for general applicants whose academic performance may have been hindered by circumstances uncontrollable by the applicant. For instance, schools will overlook a lower UGPA if the student had to maintain a substantial part-time job to overcome financial hardship. The array of applicant categories varies by school, but every school has at least two.

What about the law school hopefuls that don’t fit into any of the special categories and have a lower than average LSAT/UGPA? Will the engineer who was required to complete 7 courses per term make a worse law student and lawyer than a music major who has played an instrument since the very moment he could pick it up? asks one Law Admissions officer. This is where the practices of holistic schools hopefully allow for the realization that these candidates may be important contributors to the legal profession and consider them for admission, despite a sub-par academic record. If we consider schools like UBC who weigh an applicant’s LSAT score and GPA 50/50 to be on one end of the spectrum, then the University of Windsor is on the complete opposite end.

Windsor’s Faculty of Law assesses candidates on 7 criteria: university program and UGPA, work experience, community involvement, personal accomplishments, career objectives, personal consideration, and LSAT score. Applicants discuss each criteria in a personal profile submitted to the university. Studies have demonstrated that Windsor law graduates admitted under the holistic methods are of the same caliber as graduates admitted under the old LSAT/UGPA method with respect to attitudes towards the legal system and goals to modulate justice in favour of the public agenda.

Graduates from Windsor appear to be equally as competent, successful (income-wise) and creative as other law school grads. In addition, a 1998 study in the Saskatchewan Law Review showed that over 1000 applicants who were admitted to the Windsor Faculty of Law would have otherwise been rejected from a legal education by other institutions. So, perhaps the new system works. Windsor has actively assembled a student body that is both academically successful and offers diverse contributions to Canada's legal community.

In Windsor's case, a written statement appears to be sufficient for distinguishing the best applicants given the criteria they are evaluating. Queen's University, on the other hand, claims to assess "intellectual curiosity, avid interest in law, social commitment, reasonable judgment and insight, leader potential, teamwork, creativity, innovative endeavours, self-discipline, time management skills and maturity." Impressive. But does the fact that this assessment is based only on written statements from applicants and their references shed doubt on their method?

Results like Windsor's are promising, but at the same time confusing. If Windsor's law admissions committee can generate a diverse student body while allowing what some schools may deem "less desirable" applicants to study law at their school, then why haven't all 15 law schools followed suit? It's likely bit of a prisoner's dilemma, law schools fear making a leap away from non-traditional means of assessing applicants because it may in some way hinder the academic performances of their students, because as it stands right now, grades get you the jobs. Plain and simple, all the large law firms hire based on law school grades, and it is these large firms that recruit most of the law graduates because they have the most available spaces. So, schools who can't produce students with high GPAs, will have students without articling positions and upon completion of their law degree will yield many unemployed (and likely financially troubled) people. A vicious cycle that clearly needs to change.

Another reason why law schools won't automatically adopt a holistic approach such as Windsor's is that the selection process for applicants could become very complicated and labour-intensive if schools decide to assess more subjective criteria. But it is the belief of the researchers studying the University of Windsor's admissions process that with "commitment, orientation and direction, evaluators can learn to apply a non-traditional policy." One school (Windsor) is on board and receives just as many applicants as the next school, but it manages and so far has escaped major catastrophe.

Finally, the Canadian common law schools stick to their traditional methods of weighing the caliber of applicants because they trust the LSAC studies and see no reason for change. The admission committees at the majority of schools keep their LSAT/UGPA method because they believe it works. One would assume then that these schools have conducted studies to support their beliefs. Often, this assumption is wrong. In fact, I was surprised that upon contacting some of the reputable schools in Canada including UBC, the University of Toronto, Osgoode Hall Law School and Queen's University, they could provide me with no data regarding the effectiveness of their admissions process nor did they indicate studies were being done. Dawna Tong and W. Wesley Pue in their 1996-1997 study also struggled to find any internal assessments of admissions policies from individual common law schools in Canada. The University of Victoria was very open to discuss how they evaluated their applicant pool, but still couldn't yield official statistics regarding the effectiveness of their method in selecting a student body representative of the diversity among Canadians.

One UBC representative confessed that there was no doubt as to the predictability of the LSAT in determining academic success in law school, yet couldn't provide proof beyond the LSAC summaries of US schools. Without internal, unbiased studies how can we simply equate the disputed findings of the LSAC to Canadian schools? Some law schools in Canada allow LSAC to conduct correlation studies on their behalf, but these reports cannot be accessed by the public, nor have their results been dubious enough for law schools to strive to adopt alternative methods of admissions. Though, as mentioned, schools are slowly adopting slightly new policies, for instance, as of this year UBC requires a personal statement for their "Regular" category applicants, no drastic solutions are being considered. As far as many schools are concerned the old saying holds, "if it's not broke, don't fix it."

To delve deeper into the implications of the traditional admissions process let us consider a hypothetical. Imagine 3 students: Student A is an average student with a UGPA of 3.7 (on a 4.0 scale) and an LSAT in the 75th percentile; Student B struggles with the LSAT, but is an excellent student who has a UGPA of 4.0 and LSAT score in the 25th percentile; Student C is opposite to B, he has a very low GPA, roughly 2.5, but an LSAT around the 99th percentile.

The University of Victoria has the lowest LSAT weighting among all the common law schools who weigh the test (30% of the weight is based on a candidate's LSAT score and 70% of his/her UGPA). They use an index score for each new applicant pool, automatically doling out admissions offers to anyone above that score, consistent with the practices of other schools. For the 2005 incoming students the lowest UGPA that would be admitted with an LSAT in the 99th percentile was 3.59 (on a 4.33 scale) and the lowest LSAT score possible with a perfect UGPA was one in the 56th percentile. According to these figures, our mediocre Student A would be the only one automatically admitted to law school. Outlier students B and C will be placed in the same category – the 'maybe' pile. While the mediocre student sits at home relieved that he was accepted somewhere the two other students worry about the fate of their education.

Student B, with a perfect UGPA could likely be put into the "border-line competitive" group given that UGPA is weighted more heavily, and student C hasn't a chance of being admitted. Next, the admissions committee would assess all of student B's subjective criteria to determine whether or not he stands "above the rest" and is worthy of a legal education; he may or may not be admitted. At another institution such as the University of Alberta where the weightings for UGPA and LSAT are reversed, Student C would enter the "border-line competitive" group to be considered for admission, where as Student B would be the rejectee. So, one student is more desirable to the University of Victoria and one more desirable to the University of Alberta, but both Canadian common law schools, consider these, possibly intellectually capable students part of their "second-string" of admissions. How can both methods be generating the same "quality" of legal professionals? How can this system weed out the mediocre students and focus attention on the critically-minded individuals?

There are so many criteria that could be evaluated to determine whether an applicant is suitable for today's law programs, but it is extremely difficult to assess which of these criteria supply the Canadian legal profession with open-minded, intellectual individuals prepared to make a difference for the better of the public. When we say we are seeking "intellectuals", what do we mean? The definition of intellect is the ability to learn and reason; the capacity for knowledge and understanding and the ability to think abstractly or profoundly. Surely, a standardized test, academic performance, or even a one-page personal statement cannot assess the capacity of an individual to be intellectual, but what can?

I considered the idea of a personal interview and wondered why none of the Canadian common law schools use an interview process to evaluate the caliber of prospective students. The consensus was that interviews are very time-intensive and require a great deal of training and staff orientation. Time requirements are certainly a problem, but all Canadian medical schools interview potential applicants. Using UBC as an example, in 2004 there were 1944 applications to the Faculty of Law for their 209 available spaces, and though they refused to reveal their data, they make around double the number of offers every year. UBC's Faculty of Medicine in 2004 received 1314 applications for a student body of 128 and performed 532 applicant interviews. Statistics for the other Canadian law/med schools are similar, indicating that an interview process is possible after consideration of several factors to try to choose the best students for the upcoming year. Obviously the questions in a law school interview will be very different from those of a med school interview; whether the interviewers would require aloud problem-solving or analysis of both sides of a complex situation would need to be discussed and verified as effective.

Alternatively, the de-emphasis of the LSAT score has been proposed to increase the potential for admission of a wider variety of applicants, but this would have to be performed in addition to consideration of subjective criteria.

The University of Alberta changed its requirements to 70% LSAT / 30% UGPA weighting to surmount the new 4 year programs offered by colleges which are acceptable as equivalents for undergraduate degrees, but are argued to be less academically rigorous, thus their new weighting takes the bias off individuals from "easier" undergraduate backgrounds. But is almost total reliance of the LSAT the solution?

Does Canada want good law students or good legal professionals? I think the answer is both; the former seems strongly to develop the latter. We can't solve the issue of law school admissions overnight. Administrators should demand more Canadian studies of admission practices, which need to be shared between schools to compare the effectiveness of all methods. Likely, no one solution will shine, but a myriad of several applicant selection techniques may prove to be best. As for the Canadian common law schools, they must hold a greater priority to attaining a strong, intellectual student body – after all they are hand-picking the legal minds of our future.