quire a lawsuit. Instead, problems are viewed as multidimensional, often requiring non-legal or multidisciplinary solutions. The lawyer's role is to assist the client in resolving problems in the broadest sense because, in our litigious society, many non-legal problems tend to masquerade as legal problems. One of the most significant aspects of the lawyer's role is assisting the client in building, maintaining, and strengthening positive relationships with others to avoid or prevent conflict.

If we wish to change the way lawyers prioritise their thinking about problems, we must change the way they are educated. We cannot abandon the case method entirely, but we must rethink the advisability of its continued use as the primary method of legal education. By continuing to rely on appellate cases as the primary method of teaching in the first year, we not only convey the tacit message that litigation is the problem solving method of choice, but we actually make it more difficult to introduce later instruction in other forms of problem solving.

Underlying the case method is a of tacit assumptions which significantly constrain the options a lawyer may consider in attempting to resolve a client's problem. Lawyering limited to the analysis and manipulation of rights misses opportunities to prevent or resolve problems by reconciling or redesigning the relationships in which problems are embedded.

The justification for the case method that it teaches law students 'how to think like lawyers' is, of course, the most commonly advanced justification for this curiously limited view of the law. This much seems clear: practising lawyers do not think like appellate judges, and lawyers do not think like academicians. This famed legal reasoning (the ability to 'think like a lawyer'), which the case method teaches, appears to be a uniquely circular style of reasoning.

For creative problem solving to occur, it is essential that the problem be stated as simply, but as broadly as possible, to allow for a variety of different solutions. As a foundation for the investigative steps which follow it, the statement of the problem must avoid anticipating the conclusion or outcome. Too narrow a problem definition risks overlooking both the complexity of the problem and the richness of resources to resolve it. In addition, too narrow a definition will stifle creativity. Moreover, a definition which assumes the answer is anathema.

Should we toss out the case method entirely? Definitely not. The study of litigated disputes not only teaches the rules of law but provides the reasoning to show how and why the cases were won. Preventive law cannot be properly practised until the practitioner knows what must be prevented and how it can be done. Problems cannot be creatively solved until the practitioner fully understands the problems and the nature of their legal solutions.

But we should recognise the truth about the case method: it does not teach law students to think like lawyers; it teaches them to think like judges with all of the constraints that role implies. This is not a bad thing. In order to be competent advisers, lawyers must understand how judges think. But they also need to understand that, as lawyers, their available options are greater and therefore their own thought processes can be much broader. They will be much more effective in representing their clients if they think more as creative problem solvers and less like the ultimate decision maker.

The goal for legal education is to provide contexts in which students can learn fundamental legal concepts, develop intellectual versatility, learn to use the range of their intellectual capacities across the range of lawyering tasks and develop a critical consciousness about their professional role. Instead of teaching students from appellate decisions on how to win or defend a lawsuit, we could teach from those same cases the following: how to draft the will or trust; how to write a security agreement or mortgage; how to prevent or mitigate an actionable tort; how to protect intellectual property; how to obtain approval of development plans; how to negotiate, mediate and arbitrate; and how to word the settlement agreement. The possibilities of using full-context case studies along with appellate decisions are challenging and endless.

However strongly the traditionalists may object, there is a growing body of scholarship supporting the need for radical changes in legal education. In law, as elsewhere, traditional borders between separate intellectual disciplines are rapidly breaking down. The complaints of the profession and the public dislike of lawyers and lawsuits, are all forcing legal educators to face up to the fact that there are definite limitations to what can be achieved through the case method of instruction.

Teaching creative problem solving: a paradigmatic approach
L Morton
34 *Cal W L Rev* 2, 1998, pp 375–388

Problem solving involves perceiving that the world we would like varies from the world as it is and trying to move the world in the desired di-

rection. It is a process–either a 'move' or a 'search', in effect, moving from a current state to a desired state.

The MacCrate Report identifies the skills and concepts comprising problem solving as: identifying and diagnosing the problem; generating alternative solutions and strategies; developing a plan of action; implementing the plan; and keeping the planning process open to new information and new ideas. This places too much emphasis on problem solving in the context of client-driven representation by individual lawyers. While these applications of problem solving are certainly important facts of law-related work, they are not the only ones. Lawyers also perform such tasks as policy formulation, legislative work, organisational structuring and consultation.

Creative problem solving is not as constricting as a model of problem solving based solely on individual law practice. It promotes a deeper and broader analysis of an existing or potential problem. Thus, creative problem solving offers a more useful, global approach, not only by the individual law practitioner in her relationship to her client but also by the legal profession in its relationship to society.

Creative problem solving in law has six facets which differentiate it from the more narrow approaches to problem solving. First, it focuses on underlying needs and interests, rather than positions, of individuals as well as society. Second, an analysis of values inherent in the process is part of the process. The third facet is the exhaustive and continuing investigation into disciplines and resources other than the law which creative problem solving requires. Fourth, the process requires modes of creative thinking not found in legal analysis alone. Fifth, creative problem solving places greater emphasis on problem prevention. Finally, it requires conscious self-reflection and analysis.

There is an identified gap between legal education and legal practice. Problem solving describes what lawyers do in practice: identify, understand and resolve problems. Creative problem solving involves not only legal skills but also development of cognitive, heuristic thought processes. The ambiguous situations of law practice require more original thought than is taught through appellate cases. In fact, the narrow analysis of appellate cases, particularly in the second and third years, may stifle students' development of original thinking. The process of creative problem solving offers a broader perspective on our roles as attorneys. It demands a focus on a lawyer's duty beyond the normative legal rules pertaining to client advocacy, including a duty to promote societal justice, awareness of values, problem prevention and self-reflection.

The model here offered focuses on continuing investigation and prevention analysis throughout the process, in addition to awareness of values and interests. The process has six phases. This is meant to be merely a starting point–not an absolute or necessary framework. Each phase of the process is infused with four elements: values, interests, investigation and prevention. First, the problem ought to be identified. Phase two attempts to better understand the problem. Posing solutions to the problem occurs in phase three. After numerous solutions are conceived, the solutions are compared and selected in phase four. Once a solution is chosen, phase five analyses the implementation of the solution. Phase six provides a final analysis of the solution and its implementation with the original problem, as identified. The phases do not necessarily proceed in the order named. Frequently, phases may be combined.

The model can be used in the traditional law school curriculum. For example, in a Property class, the concept of adverse possession, as well as a process for creative problem solving, could be reinforced by offering a problem in which the client has been sued by a neighbour, claiming adverse possession. The students' initial reaction might be to examine legal doctrine learned through the study of appellate cases. However, analysis of the issue should not end there. A creative problem solving paradigm can teach other methods that lawyers might use to resolve the issue. In doing so, students would inevitably incorporate more humanistic and creative concepts in their thinking. By framing class discussion in a creative problem solving context, the student is exposed to a much richer variety of approaches to the issue than legal analysis alone can offer.

It is critical that students are informed early that an interest-based, creative approach to legal issues is a necessary element of their professional development. It is important that the concept is reinforced by traditional first-year professors, who frequently serve as students' mentors. Application of a creative problem solving process in a few traditional courses lends legitimacy to the process that teaching it in an isolated skills class does not. The focus of the future should be on continuing the dialogue on the effects of and improvements in our methods to incorporate creative problem solving in the law school curriculum.