

**CHARTING NEW COURSES:
LEADERSHIP IN CURRICULUM REFORM**

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I. Introduction

Since 2003 the Chief Justice of Ontario's Advisory Committee on Professionalism has run semi-annual colloquia dedicated to encouraging professionalism among lawyers. The Committee has identified ten elements or "building blocks" of professionalism: scholarship, integrity, honour, leadership, independence, pride, spirit, collegiality, service, and balanced commercialism.¹ The focus of the eighth colloquium was on the element of leadership.

Lawyers lead in many different ways, both within the practice of law and in other contexts like business, government, and social advocacy. One of these other contexts is the legal academy. Working as law professors, lawyers have the opportunity to display leadership in all important aspects of their career: in their research, their teaching, and their administration of the law school. They also have the opportunity to expose students, most of whom will soon be lawyers, to the core elements of professionalism.

This article will discuss some of the broader issues raised by leadership in the legal academy. It will then turn to its more narrow focus: leadership in the process of curriculum reform. Readers should be warned that this is not a research paper and it does not rely on any empirical work. Throughout, the basis for my observations is my own personal experiences, in general as a law professor over the past six years at Western Law and in particular in reforming the upper-year core curriculum and creating a mandatory first-year course in legal ethics.

II. Leadership Opportunities for Professors

A. Teaching

The Committee's definition of leadership cites as an example "providing a path through complex laws and regulations and guiding and advising the client on his or her intersection with the law and its intricacies". If we substitute students for clients, we have a reasonable explanation of at least one approach to the process of teaching law. In this sense professors lead every time they lecture, run a seminar, grade, or answer student questions.

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¹ The definition is on-line at <http://www.lsuc.on.ca/news/pdf/definingprofessoct2001revjune2002.pdf> (accessed December 30, 2006). It is ten pages long. It has been revised twice, in December 2001 and June 2002.

To be sure, there are some key differences from practicing law. In teaching the professor has far less at stake as to whether the student successfully reaches his or her destination. When a student fails a course, the tendency is not to see this as a failure of the professor's leadership in teaching. Moreover, unlike in practice, the professor often has complete control over the outcome. Regardless of student performance, the professor can still create the appearance of a successful educational journey by using a generous grade distribution.

While the very process of teaching embodies leadership, professors are very much in control of how effectively they teach, and those that do a better job are rightly seen as leaders in a further sense. This can involve innovation and new technology: the use of video, music, and web-based resources. It can involve improved student engagement in the learning process: more discussion, more active participation and more feedback. It can involve mastery of very traditional elements of teaching: an engaging lecture makes a huge difference in the learning experience. Professors recognized for the quality of their teaching have very likely demonstrated leadership in one or more of these areas.

B. Research

The quotation in the previous section is equally applicable to legal research. In addition, the Committee's definition refers to "writing about the law in journals and newspapers". Whether writing for the courts, lawyers, other academics, students, politicians or a lay audience, virtually all scholarship produced by professors comes within this notion of leadership.

As with teaching, there are significant challenges in evaluating the extent to which particular legal scholarship plays a leadership role.² Professors often find themselves debating this sort of question on appointments and on promotion and tenure committees. Some professors do not consider publications that describe and organize the law as true scholarship. Others eschew doctrinal analysis and insist on a theoretical focus. Still others discount publications, whatever their content, unless they appear in the "right" law journals.³ Professors with these views certainly have a narrower notion of leadership through scholarship than the Committee's broad definition.

In contrast, some examples of particular leadership in legal research are easier to identify. Through their choices of what secondary sources to cite, judges mark out legal research they consider to be particularly relevant or valuable. Professors establish reputations with other academics and with the wider profession based on their scholarship. A particular book becomes the standard reference in a given field. Changes in the law, initially proposed in an article in a law journal, are adopted by the courts or by the legislature.

² See the useful discussion in Larry C. Backer, "Defining, Measuring, and Judging Scholarly Productivity: Working Toward a Rigorous and Flexible Approach" (2002) 52 J. of Legal Ed. 317.

³ See as an example the comments of Dean David Van Zandt of Northwestern University quoted in William R. Slomanson, "Legal Scholarship Blueprint" (2000) 50 J. of Legal Ed. 431 at 435.

C. Administration

The Committee's definition also refers to leadership by "lawyers in whom the trust of private or public enterprises is placed". Universities are one such public enterprise, and lawyers frequently assume positions of significant leadership within them. Professors perform scores of administrative functions within their law schools, from serving on admissions, promotion and hiring committees to maintaining and enhancing academic programs to running extra-curricular activities for students. In all of these areas lie opportunities for leadership. Another area where leadership is important is in the context of the relationship between employees and management, typically in a unionized campus environment. Professors also climb the administrative ladder, serving as Associate Deans, Deans, Vice-Presidents and Presidents of universities across the country. The very nature of these positions requires considerable exercise of leadership skills, often moving beyond law and into the realm of business and management studies. Law professors who must come to grips with the concepts in micro-books like *The One Minute Manager* and *Who Moved My Cheese?* are likely to feel they have suddenly changed disciplines altogether.

D. Modeling Professionalism

One important issue of leadership in legal education centers on the extent to which professors should aim to model standards of professionalism to their students. Professors are the first lawyers most students will come to know. Does this impose on professors an obligation to embody the standards of the profession?⁴

It is certainly possible to teach law, and do so very effectively, while behaving in ways some would characterize as unprofessional. A torts professor might be curt, rude or condescending to students. A property professor might refuse to explain how students will be evaluated and change the parameters of assignments mid-stream. A criminal law professor might miss several classes and be late for others. A constitutional law professor might insist students submit work under their names rather than using blind numbers or codes. Yet in all of these courses the students could nonetheless learn the law very well.

It is open to a professor to take the position that he or she is simply in the business of teaching the law and has no intention of modeling any particular values to students. However, it seems unlikely that many professors would adopt this perspective. The majority of professors likely would acknowledge that they want to be perceived by their students and colleagues as professionals, and that they do not actively seek to behave unprofessionally.

Regardless of one's intentions, there are many professionalism pitfalls in the legal academy. Grading raises issues of integrity and conflict of interest. Is it acceptable to look behind a system of blind numbers or codes before the grades are finalized? Maybe a

⁴ See Paul T. Hayden, "Professorial Conflicts of Interest and 'Good Practice' in Legal Education" (2000) 50 J. of Legal Ed. 358 at 360-61.

professor has concerns about how a particular student has done. Maybe he or she wants to know which student wrote a particularly unorthodox answer. Maybe he or she wants to see if the results correlate with the students' general performance in previous courses. There are also issues of confidentiality. Are professors vigilant enough in safeguarding information about students? Is informal discussion of how students have behaved or performed in various courses inappropriate? Civility is of course another area of concern, not only in the relations between professors and students but equally as between professors.⁵

Another important element of modeling professionalism relates to pro bono activities. Practicing lawyers are increasingly encouraged, by each other and by the regulator, to offer their services pro bono as appropriate. The drive to instill some sense of responsibility starts in the law schools. One example of this is the success achieved by Pro Bono Students Canada in getting hundreds of law students to volunteer to do legal research projects for community groups. Professors looking to model this element of service for their students should therefore consider their own pro bono activities and analyze how to involve their students in them or otherwise bring them to their attention.⁶ Similarly, law schools should consider how they might increase the pro bono activities of their professors, starting with recognizing those activities that are already ongoing.⁷

III. Curriculum Reform

A. Perceptions

Curriculum reform is an important administrative process for any law school. It is essential that law schools periodically re-evaluate their course of study. Among the most crucial curriculum issues are what courses will be mandatory and in what years must they be taken. In the context of a discussion of leadership in the legal academy, it should seem reasonably evident that curriculum reform presents an opportunity for leadership. Indeed, it is arguably easier to conceive of leadership being relevant to curriculum reform than to teaching or research. Curriculum reform is an administrative process, from idea through debate to implementation, and so is well suited to conventional ideas of leadership, especially those borrowed from a management context.

Despite this, while it is probably not an insult to be described as a leader of law school curriculum reform, today it does not seem to be much of a complement either. The modern law school appears to prize research and scholarship above all else.⁸ Now increasingly being compared by university administrators and external organizations to other university faculties, law schools are racing to develop and promote outstanding

⁵ See Michael L. Seigel, "On Collegiality" (2004) 54 J. of Legal Ed. 406.

⁶ See Deborah L. Rhode, "The Professional Responsibilities of Professors" (2001) 51 J. of Legal Ed. 158 at 161-64.

⁷ See Deborah L. Rhode, "The Professional Responsibilities of Professional Schools" (1999) 49 J. of Legal Ed. 24 at 35; David Luban, "Faculty Pro Bono and the Question of Identity" (1999) 49 J. of Legal Ed. 58.

⁸ Rhode, *supra* note 6 at 159: "With rare exceptions scholarship is what matters for purposes of reputation and recognition, and scholarship of an unduly narrow sort".

researchers and to significantly increase grants received.⁹ There is still a place for good teaching, but its importance is in decline. At the bottom of the kinds of contributions professors can make lies the realm of administration. Not, to be sure, at the upper levels: those with titles indicating the importance of their administrative efforts are valued as much as ever. But rank-and-file members of the faculty generally receive little appreciation for doing their individual administrative duties.

This hierarchy is reinforced by the individual preferences of professors. Despite choosing to work in publicly-funded, highly bureaucratic organizations, the overwhelming majority of law professors seem to profoundly dislike issues relating to the administration of the law school. Much of this dislike seems quite genuine: these professors would rather be doing research than administration. But the dislike is also encouraged. Each time the administration tells junior members that their administrative efforts will play no role in their tenure evaluation, it tells them that they are wasting their time working on administrative projects rather than research.

This context places anyone who works on curriculum reform, much less purports to lead it, in a difficult position. It means that those who express interest in the area are likely to be met with a guarded response. They are raising issues others would very much prefer not to discuss and they are voluntarily spending less of their own time on their research. It should then come as no surprise that the idea of leadership in law school curriculum reform has not received much attention.

B. Recent Reforms at Western Law

Having identified curriculum reform as an area for leadership, in the remainder of this article I want to offer some suggestions from my own experiences to those interested in leading in this area. Just as professors, especially more junior ones, are often looking for ways to improve their teaching or research, so too might some be interested in improving how they address curriculum reform issues.

Since joining the Western Law faculty in 2000 I have been involved in several curriculum reform projects. One was the creation of Canada's first mandatory first-year course in legal ethics and professionalism. That project fits the theme of leadership in the legal academy in a double sense, because it involved a curriculum reform focused on improving the teaching of professionalism. However, I have described that project elsewhere,¹⁰ and I will not repeat that discussion here. Instead, I want to focus on my most recent reform project, which involved Western Law's upper-year mandatory curriculum.

I recognize that the specific details of this project will not be directly relevant to many academics considering issues of curriculum reform. My main reason for providing them

⁹ For examples of the steps law schools are taking to increase their focus on research see James Lindgren, "Fifty Ways to Promote Scholarship" (1999) 49 J. of Legal Ed. 126.

¹⁰ Stephen G.A. Pitel, "The Teaching of Legal Ethics: Recent Developments in Ontario" (2005) 55 J. of Legal Ed. 592.

is to give context to the more general suggestions for leadership in curriculum reform at the end of this article. I hope that readers will accept my explanation of the project in that spirit. In addition, though, I hope that at least some of the issues raised in the project will have analogies to those in other projects being considered at other law schools, and so will also be useful in that way. Further, while some academics may have a unifying theme which runs through their curriculum reform projects, such as to minimize the number of mandatory courses or increase practical skills training or promote interdisciplinary studies, when I look back on my own leadership projects I cannot with confidence identify any such theme. So discussing this particular project makes more sense to me than would writing about curriculum reform at a more general level.

First-year students at Western Law are required to take a fairly conventional group of mandatory courses: Constitutional Law, Contracts, Criminal Law, Property, Torts. They also must take Foundations of Canadian Law, Legal Research Writing and Advocacy, and Legal Ethics and Professionalism. However, unlike students at many Canadian law schools, Western Law students also have to take a group of mandatory upper-year courses, known as the “core curriculum”. Since 1986, they were required to take four courses in second year – Administrative Law, Company Law, Evidence and Income Tax – and two courses in third year – Civil Procedure and Trusts.¹¹

Within a year of joining the faculty I came to have concerns about the core curriculum. As a teacher of civil procedure and advocacy, and a former corporate and commercial litigator, it struck me as wrong that students could not study Civil Procedure until their third year, no matter how interested in a career in litigation they might be. I found myself teaching Civil Procedure to students who had already taken optional courses in class actions, litigation practice and conflict of laws, who had already handled civil litigation files in the faculty’s community law clinic, and who had already worked on litigation files as summer students with law firms. I became convinced that it was wrong to have Civil Procedure as a mandatory third-year course.

Originally I thought we might be able to solve this problem simply by swapping Civil Procedure with one of the four mandatory second-year courses. I spent some time negotiating such a swap, and thought that I had one worked out, but in the end neither the faculty nor the specific instructors concerned were willing to have one of those four courses moved to second year. To an extent the problems I had identified with having Civil Procedure there became cogent reasons for others to oppose their course being placed in the same situation.

This setback led me to look to a more elaborate solution, re-examining the whole core curriculum. In the summer of 2004 as Chair of the faculty’s Programs Committee I proposed that we consider five questions. First, should we maintain some form of core curriculum? My sense was that the majority of the faculty was in favour of maintaining something, or perhaps were ambivalent. Nonetheless, I thought it important that we assess the level of support for complete abolition.

¹¹ In second or third year Western Law students must also take a course that requires them to write a research paper. This requirement was not changed by the recent curriculum reforms.

Second, could we identify a rationale behind the core curriculum? One that was frequently offered was that it increased the ability of our graduates to obtain positions with firms, who could rely on the students having taken a wide range of foundational courses. Our student placement rates were excellent, but it was difficult to assess beyond the level of anecdote what role the mandatory courses were playing. Beyond this, there were several other possible rationales: (a) ease of administration, (b) attractiveness to potential incoming students, (c) improving students' skill set and ability to learn law beyond law school, (d) ensuring coverage of particular skills linked to specific courses (such as statutory interpretation), (e) signaling our sense of the relative importance of certain subjects of study, and (f) tradition.

Third, how should the core curriculum be structured? In general terms, we identified three options: (a) a closed list of required courses (take 6 of 6; the current form), (b) a basket of required courses from which students must select (take 4 of 6, or 6 of 8), and (c) a combination of these approaches: both a closed list of required courses (take 2 of 2) and a basket of further courses (take 3 of 5). My own view was that the first option was too restrictive. Indeed, this concern was commonly raised by our students. It was very difficult to justify why every student, regardless of choice or interests or career path, should have to take Administrative Law, Tax, Evidence and Trusts. I also thought the second option was too flexible. First and most obviously, students must take Civil Procedure, as this is required by the various law societies. Second, it seemed to me that if we were going to retain a core curriculum, there should be at least some element of commonality across all students. Linking this with our faculty's express focus on business law, my specific proposal was that the Civil Procedure and Company Law remain mandatory. Beyond this, however, introducing some element of limited choice would preserve the essential features of a core curriculum but provide students with the ability to structure their course of study as best suited them. This led me to advocate the third option.

Fourth, what courses should be in our core curriculum? As indicated, my view was that Civil Procedure and Company Law had to be retained. Beyond this, my personal sense was that Administrative Law, Income Tax and Evidence were sufficiently important that they should form part of the new basket of core courses, but none should be mandatory. I thought the most specialized and least foundational of the current mandatory courses, Trusts, should be made a purely optional course. I also thought we should consider adding two new courses into the basket: Commercial Law and Public International Law.

Fifth, when should students have to take the core courses? Our current practice of designating some core courses as second-year courses and others as third-year courses went beyond requiring students to take particular courses: it mandated when, in their law school careers, they could study certain areas. In my view it was difficult to formulate reasons, beyond administrative convenience, why we as a faculty should mandate in which year the students take these courses. It was in their interest to be allowed to take those courses that interest them more, or that they think might be more useful in the short-term, sooner rather than later.

My hope was that these five questions could be debated across the faculty and resolved in time for any necessary resolutions at the last Faculty Council meeting of the upcoming academic year, which was in March 2005. To that end, I circulated a fairly detailed memo about these five questions in September 2004. As a faculty we met and discussed the issues in October. We solicited input on the proposed changes from current students, primarily through their two student representatives on the Programs Committee. We created an e-mail address and invited alumni to express their views on these questions. We canvassed some people involved in the recruiting process at several Ontario law firms. No consensus emerged on the issues by the late fall, though two trends seemed apparent: a strong minority of the faculty would prefer to abolish the core curriculum altogether, and a majority of the faculty recognized the need to make the requirements at least somewhat more flexible. Unfortunately at this stage the Dean was unable to provide additional time for the faculty as a whole to discuss these issues, which very much seemed to be the next necessary step in the process. As a result, no further steps were taken during the winter, and the issues were scheduled to be discussed at the faculty retreat organized for April 2005.

While it was disappointing to have the whole process pushed back by a year, the discussions in April ended up being extremely helpful at gauging the mood on most of these issues. It became clear that these reform proposals were not going to die away, or be continually deflected by calls for more study, surveying or reflection. One way or another we would vote on these reforms in the fall of 2005. Compromise was very much at the heart of the discussions. Those who wanted the core abolished could see that this result was unlikely, so they moved to support what seemed the next-best option – a smaller, more flexible core. Those who wanted to retain the core, especially on the basis that they served to distinguish Western Law from other schools, accepted the need for at least some reforms. These discussions also produced general agreement on using a structure with both a closed list of required courses and a basket of further courses.

In October 2005 Faculty Council passed, by a wide margin, a motion changing the core curriculum. From 2006-07 students would be required to take Civil Procedure, Company Law and three of the following courses: Administrative Law, Evidence, Income Taxation, Public International Law, and Trusts. They could take any of these courses in either second or third year. On introducing the motion I observed that the reform had four central features. First, it would add an important international law course to the core, in recognition of the increasing importance of that area of law. Second, it would introduce flexibility, so that students would not be required to take every core course but rather have some limited choice. Third, it would allow students to decide in which year they will take these courses, allowing greater autonomy and control over their course of study. Fourth, it would reduce the overall size of the core by one course, allowing for more optional courses, specialization and skills learning.

Over the balance of the 2005-06 academic year Programs Committee worked with the faculty's administrative team to implement the new core curriculum and explain it to the students. It came into operation for students entering second year in 2006-07. While the

changes are too recent to allow any firm conclusions, the new structure seems to be proceeding well and with the approval of students and instructors.

C. Leadership Elements

From my involvement with the core curriculum reform project I can offer some thoughts on how to lead a process of curriculum reform. These are of course only suggestions, and they will not work for everyone or in all faculties.

1. Be wholly committed to the reform. Anyone might raise an idea about how a curriculum might be reformed, and might have varying degrees of faith or interest in their own idea. To lead the process, however, requires considerable personal commitment. I was absolutely convinced that my law school needed a mandatory ethics and professionalism course and that its core curriculum was overly restrictive. I think this degree of zeal is essential to leading these sorts of reforms.
2. Make the proposal specific. The reform process will take longer and lack focus if it starts at a very general level. Part of the leadership role is to set out a specific solution to the problem identified in the current curriculum. Circulating a detailed proposal, including outlining multiple options, aggressively starts the process and provides a clear indication of a possible outcome. It also fills a notice function, providing details of the reform to all members of the faculty and other stakeholders. A specific initial proposal can always be adjusted through the reform process. With our core curriculum, we ended up retaining Trusts in the basket rather than adding Commercial Law as originally proposed. It was easier to make this modification to the detailed proposal than to start with only general ideas and hope something specific emerged through the process.
3. Be persuasive. Central to the leadership process is the ability to convince others of the merits of the proposal. Good ideas need advocates. Curriculum reforms generally have to be adopted by the law school's Faculty Council or similar governing body. This means winning over a significant number of professors and possibly also students. It is vital to evaluate both your own general skills of persuasion and the arguments in favour of a particular reform before proceeding.
4. Be persistent. It was over four years from when I raised my concerns about Civil Procedure as a mandatory third-year course to when the faculty adopted the new core curriculum. During that time the reform proposal suffered setbacks, particularly a lack of interest in discussing the issue, and could have ended up being abandoned. Part of the leadership role involves providing the issue with the energy and momentum to keep it moving forward. Persistence of another sort is also required. As the individual face of the reform, you become the target for anyone who does want to debate the issue. Accordingly, you need to be ready to be persuasive not only at formal meetings but in informal discussions over a lengthy period. These informal discussions go a long way to building the necessary support.

5. Build enough consensus. Approving a significant reform by one or two votes is a recipe for discontent. The aim should be to secure broad support. This also means that not everyone has to be onside. You can accept that some professors oppose the change and are not open to persuasion, and diplomatically agree to disagree with them on the issue. Indeed, having a small vocal minority advancing arguments the majority of the faculty perceive as weaker can strengthen the case for the reform. It is also very important to gauge the evolving mood. It is very hard to assess the utility of a one-hour faculty discussion of an issue if most professors express no opinion. I am a firm believer in calling for one or more straw polls after any such discussion, on the understanding that people do not have to vote and the votes are not binding, because of the use of the poll results in moving the issue forward.

6. Pick the right battles. One of the objections to proceeding with the core curriculum reform was that it lacked an underlying theoretical rationale for why certain courses were included and why others were not. Some members of the faculty insisted that such a rationale had to be developed before the reform could go further. I was very concerned about this, since my own view was that no single theory explained which courses would or would not be included in the core. Rather, for a combination of reasons, some of which meant more to some professors than others, the collective sense supported including the courses we proposed for the core. I therefore chose not to accept the challenge of developing such a theory. Instead, my aim was to minimize the force of the objection by countering that the current core equally had no such unifying theory. If the lack of an underlying theory was not an obstacle to maintaining the current core, it should not be an obstacle for making changes. In the end this pragmatic approach prevailed.

7. Overcome your fears. In any leadership endeavour the fear of failing is a real concern. Having championed the reform, it can seem a truly personal setback when it fails. Another fear is that of making enemies within what is supposed to be a relatively collegial environment. Just as you may be personally committed to the reform, others may be equally personally opposed. These concerns cannot easily be minimized, but they must be overcome for successful leadership. Another fear is, in a sense, one of the consequences of success. What if the faculty adopts the curriculum reform at your urging and then it does not work out in its implementation? It takes a thick skin and strong sense of self-confidence to assume even some personal accountability for the eventual success of the reform being proposed. It also takes a willingness to remain involved through the implementation stages.

IV. Conclusion

I have long been strangely drawn to administrative tasks, and so it does not surprise me that I enjoy issues of curriculum reform. I resign myself to the fact this makes me an oddity in the legal academy. I consider myself fortunate to have had the chance at Western Law to propose some reforms and to help manage them through to implementation. In my ideal law school successfully leading the implementation of a significant curriculum reform would be valued by my peers at least as much as producing a law review article. For the present I have to base my decision to be involved with

curriculum reform on what I value, rather than what others value. It is an easy choice because I find these projects personally fulfilling, more so than publishing another article. I hope that does not change anytime soon.