

**CREATING A CULTURE OF  
PROFESSIONAL RESPONSIBILITY AND ETHICS:  
A LEADERSHIP ROLE FOR LAW SCHOOLS**

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# CREATING A CULTURE OF PROFESSIONAL RESPONSIBILITY AND ETHICS: A LEADERSHIP ROLE FOR LAW SCHOOLS

## INTRODUCTION:

In 1927, then Professor, and later Supreme Court Justice, Felix Frankfurter's wrote a letter to one Mr. Rosenwald: "In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them".<sup>1</sup> This statement represented a serious challenge to the legal academy of the time and, if anything, remains an equally grave challenge to our law schools in the 21<sup>st</sup> Century. Clearly, Frankfurter envisioned a strong leadership role for law schools in ensuring that the profession was committed to ethical practice. The growth, diversity, and mobility of today's legal profession makes the task of leadership for any one group, especially the academy, very problematic.

The discussion of law school leadership tends to focus on the profession's professed interest in law school curricula, especially in the area of professional responsibility. Most often, the profession argues for a mandatory course in professional responsibility and ethics as a requirement for all students in all law schools. The underlying rationale for this argument is that such a course will, somehow, immunize all soon-to-be graduated lawyers against unethical conduct, sharp practice, and incivility just as newborns are immunized against polio, small pox, and diphtheria. Although I suspect that this is simply wishful thinking, if not demonstrably untrue, we do not actually know whether or not the thesis is correct because we, in Canada and Ontario, have not engaged in properly designed research projects to test its validity. Furthermore, there may be other ways, perhaps even more effective than a mandatory course, to reach the same result – so called "perspectives days" or "bridge weeks" are employed by some schools; others, such as my own school, have adopted a pervasive approach; still others teach ethics through their clinical programs. Just as we do not know whether mandatory courses in ethics have an affect on the level of ethical lawyering in the profession, we also have no research on which method of delivery of ethics education is the most effective, although I suspect we would find it to be a combination of all of these methods. Once again, we have little or no scholarship on the subject.

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<sup>1</sup> Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (May 13, 1927) as quoted in H.T. Edwards, "The Growing Disjunction between Legal Education and the Legal Profession" (1992), 91 **MICHIGAN LAW REVIEW** 34.

Indeed, over the thirty plus years of my academic career, I believe it is safe to say that we have been wilfully neglectful of, if not deliberately hostile to, this area of scholarship. We, in the academy, have not been sufficiently supportive through our processes of appointment, renewal, tenure, course remissions, and leaves, of those individuals who have tried to carve out a specialty in research on the legal profession and legal ethics. Nor have you in profession provided serious support or the necessary incentives for scholarly work on the profession and ethics. This is in sharp contrast to law schools in the United States where, perhaps as a result of the Watergate scandal, there has been an explosion of scholarship. There are very encouraging signs, however. I do see an increasing number of Canadian academics who are now beginning to devote at least some part of their research program to scholarship on the legal profession and legal ethics. We, the academy and the profession, need to encourage and support these scholars in their research programs and projects. I will conclude with some remarks on how we can do this at the end of my remarks.

However, I do not want to focus today on either curriculum reform or research and scholarship. I want to examine something less tangible – Setting a Culture of Ethics in Law School. My point is simple: we can have as many courses, even mandatory ones, on ethics as the timetable and student interest permits, we can foster research and scholarship in the law schools – but this will all go for nought if we do not operate our institutions and individually conduct ourselves in manner that clearly indicates to our students that we take professional responsibility and professional ethics seriously and that we conduct our affairs based upon the principles of “ethical lawyering” as they apply to the academy. If we do not conduct ourselves – individually and institutionally – in an ethical manner, the students will get **that** message and it will undermine any message of ethical lawyering we hope to instill in them through the curriculum.

### **SETTING THE EXPECTATIONS:**

Let me begin at the beginning. It always comes as a shock to me but students (and their parents) actually read our promotional materials. The students look at our website. The parents read our *Prospectus*, *Calendar*, and Admissions material. It is important to set the tone on professionalism and ethics at this stage. A mission statement which states clearly the commitment to ethical lawyering would, I believe, have an impact on prospective students. Gordon T. Butler discusses the importance of mission statements:<sup>2</sup>

A mission statement is a statement of the fundamental reason for an organization's existence. It tells something about the organization's strengths, its public image, and its core values. It may also give a sense of

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<sup>2</sup> Gordon T. Butler, “The Law School Mission Statement: A Survival Guide for the Twenty-First Century”, (2000) 50 J. Leg. Educ. 240.

confidence in the organization's stability and its ability to achieve its objectives, and a sense of its uniqueness.

All law schools approved by the American Bar Association are required, during the accreditation process, to undertake a written self-study and, as part of that endeavor, to develop a mission statement. The dean and faculty, as part of the self-study, are then to evaluate the strengths and weaknesses of the program in light of the mission statement, set goals for the improvement of the program, and indicate how the unrealized goals will be accomplished.<sup>3</sup>

As a dean, it is always prudent to examine the state of one's own house rather than offer remarks regarding your neighbor's situation. Our Statement of Objectives at the University of Windsor Law School is not as straightforward and direct on the importance of ethical lawyering as one might like. Ours begins with the statement:<sup>4</sup>

The Faculty of Law at the University of Windsor strives to serve society as a centre for the humanistic education of persons in law, for legal research, and for the provision of services which enhance the quality of life and access to justice..."

What follows is a lengthy series of goals which particularize this statement of Objectives. However, one of the stated objectives, perhaps not positioned as prominently as it might be, speaks to the importance of professional responsibility and ethics. It reads as follows:<sup>5</sup>

6. To create an academic and social environment conducive to learning and to the personal development of students, particularly women and those who are socially and economically disadvantaged, differently abled, late vocational, and from Aboriginal and various ethnic backgrounds, and in particular:
  - a. To provide opportunities for the development of social consciousness and self-awareness by students, **and to examine and develop ethical and social values in relation to personal and professional responsibility, and in particular, to instill in the students a sense of social responsibility in the practice of law** and the need for the examination of social structures with a view to contributing to such changes as may ensure social justice...

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<sup>3</sup> American Bar Association, **STANDARDS FOR APPROVAL OF LAW SCHOOLS**, Standard 202.

<sup>4</sup> University of Windsor, Faculty of Law, **CALENDAR 2006 - 2008**, p. 4.

<sup>5</sup> *Ibid.*, at p. 5.

c. To encourage students to contribute meaningfully to society and to participate creatively in the process of legal development and social change... (Emphasis added.)

It is important to note two points: first, our statement of Objectives would, I believe, be more appropriately characterized as a “vision statement”, although vision and mission statements are often interchangeable.<sup>6</sup> Vision statements are aspirational in nature but we take ours quite seriously, always striving for these, often illusive, goals. Second, many of the other elements in Windsor's Statement of Objectives focus on “access to justice” which has been a guiding principle of the Law School since 1978, the year in which our unique Admissions Policy was first instituted. Fostering a commitment to access to justice, I would argue, is also promoting of ethical and responsible lawyering. We are also committed to this element of ethical and responsible lawyering in our curriculum – our first year flagship course in *Access to Justice*, subtitled “Law, Lawyers, and Social Change”, emphasizes our commitment to this principle. The professional and ethical responsibility of lawyers constitutes a major component of the course material and occupies a significant percentage of class time.

Usually, the Dean meets the incoming class of law students on the first day. This provides a further opportunity to articulate the law school's commitment to ethical lawyering and professional responsibility. I am sure every dean has a paragraph similar to the following in his or her opening day address:<sup>7</sup>

We, on this Faculty, take ethical matters very seriously. In my opinion, the vast majority of lawyers are, contrary to urban mythology, absolutely scrupulous in their ethical conduct. This is also what we expect from you **both as students and later as practicing lawyers:** that you conduct yourselves in an absolutely scrupulous manner, both professionally and personally. I cannot emphasize this enough. This faculty views your three years here at this Law School as part of your ongoing obligation to refrain from unethical and unprofessional conduct and to uphold the highest ideals of the legal profession.

We are trying to convey a very clear message here: “ you are now in law school and the professional and ethical obligations of members of the legal profession, are to the extent that it is possible, applicable to you. We expect you to behave ethically now as a student and in the future when you are a practicing member of the profession.” (We save the enforcement mechanism for

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<sup>6</sup> Butler, *supra* note 2 at p. 240. Butler notes: “A vision statement presents a mental image of what the organization would like to become. In practice both statements are referred to generically as mission statements.”

<sup>7</sup> Elman, “Address to First Year Class 2006”. See <http://www.uwindsor.ca/units/law/lawTop.nsf/inToc/F1A01E2A562A7D9A852571EE006A2567>

day two. On that day, the Dean and the Associate Dean conduct a one hour session on academic and professional misconduct and the Windsor Law School's *Policy on Student Discipline*.<sup>8)</sup>

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University of Windsor, Faculty of Law, **POLICY STATEMENT ON STUDENT DISCIPLINE**. See <http://www.uwindsor.ca/units/law/lawTop.nsf/inToc/3DCC59996A526AD585256D87005686A5>.

At the same time, we want the students to understand that, as law students and lawyers, they not only have a duty to refrain from misconduct but also have a responsibility to engage in public and community service. This is emphasized at a number of points during Orientation but it begins with the Dean's address:<sup>9</sup>

The legal profession is a helping profession and a caring profession. I believe strongly that it is a privilege to be a member of the legal profession. About six years ago, the *Canadian Lawyer Magazine* ran an article loosely entitled "Ten Lawyers Who Make a Difference. In the end, the magazine actually highlighted 11 lawyers including a husband and wife team. To the credit of this Law School, of the 11 lawyers featured in the article, four were graduates of Windsor Law. The article lauded these individuals for being caring and helpful individuals, both in their professional as well as their volunteer lives. The truth is that *Canadian Lawyer* could have found 100 lawyers who meet these criteria; indeed in my opinion, they could have probably found 1000's. I personally know countless numbers of lawyers who serve on boards and executives of community organizations of all sorts in numbers out of all proportion to our numbers in society. They serve in lay leadership roles in churches and synagogues, hospitals and nursing homes, symphony orchestras and opera societies, theatre companies, libraries and art galleries, police commissions, sports teams, both amateur and professional, and a host of foundations and other charitable undertakings. I have always been profoundly proud to be a member of the legal profession.

Last year, we added a new wrinkle to our efforts to emphasize to the students both the necessity of refraining from ethical misconduct and the obligation to engage in public and community service. Modelled on Duke University Law School's *Blue Notes*, we distributed to each student a copy of the **WINDSOR LAW LEXPECTATIONS**. It provides a series of expectations – intellectual, ethical, professional, and personal – to which students should aspire. It provides motivation for leadership and community service. Subsequent to distribution to the first year class, it was posted prominently in a number of locations in the Law Building. Next year, we will probably forward it to a committee of faculty, staff, and students to finalize its content and determine whether we should have each student personally acknowledge that he or she will aspire to the norms contained in **LEXPECTATIONS**.

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*Supra* note 7.

It goes without saying that there has to be “follow through” on these ideals. Once again, there are two sides to realizing on the rhetoric: first, the discipline process, and, second, opportunities for public and community service. Every university has a code of student conduct or a discipline code to deal with academic offences, such as plagiarism and cheating, and non-academic offences, such as destruction of property, harassment, and so forth. In many instances, law schools have their own Discipline Policy. The purpose of having a separate policy is clear – it is designed to give effect to the professional elements of the law program and emphasize to the student that they are going to be held to standards similar to that of members of the legal profession, even while they are preparing educationally for a career in law. Indeed, the Discipline Policy of the University of Windsor Law School makes this clear. The Policy provides:<sup>10</sup>

In addition to the objects and purposes of the University as a whole, the study and practice of law demand from law students and lawyers those high qualities of character encompassed by the word “integrity”... The spirit and intent of the Code which requires civility, candor, honesty and adherence to sound moral principle shall be observed by all law students in their personal and academic behaviour to the end that credit shall be reflected upon the Law School and the legal profession.

The Policy extends the analogy from the practice of law to the study of law as follows:<sup>11</sup>

Law is an honourable discipline, and lawyers are members of an honourable profession. It is fundamental to the legal profession that the members thereof must discharge their duties to their clients, the courts, the public and their fellow members with integrity. In the same way, it is fundamental to the study of law and to the maintenance and betterment of the community of scholarship which is the Law School that the faculty and students adhere to and foster the highest standards of integrity including trustworthiness, truthfulness, fair dealing, uprightness, honesty and sincerity. Any student at the Faculty of Law whose conduct is improper in that it exhibits a lack of integrity touching the educational and professional objectives of the University, the Law School, or the profession must be appropriately disciplined in the interests of safeguarding and upholding these standards.

There is even a provision that makes the *Code of Professional Conduct* of the Canadian Bar Association applicable to certain student activities. The provision in the Policy Statement notes that the rules set out in the *Code of Professional Conduct* “ shall be observed by law students and others engaged in the provision of legal services in connection with the Clinical Education

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<sup>10</sup> **POLICY STATEMENT ON STUDENT DISCIPLINE**, *supra* note 8.

<sup>11</sup> *Ibid.*



Program of the Law School (Legal Assistance of Windsor), or the Student Legal Aid Society, or otherwise. In addition, the rules of the Code of Professional Conduct shall be observed by law students engaged in **activities analogous to the practice of law** such as mock trials and mootings.”<sup>12</sup> Indeed, this provision has been interpreted very broadly over time to include almost any student activity to which the *Code of Professional Conduct* could be applied.

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*Ibid.*

There are times when student behaviour does not come into direct conflict with the student discipline policy or other university regulations<sup>13</sup> but is, nonetheless, unacceptable. It is not professional and may well land the student in trouble once they enter the practicing bar. This has arisen when students have treated staff in a rude or even abusive manner, either in person, on the telephone, or in email correspondence. We have taken the position that the student should receive a letter from the Dean that this behaviour is unacceptable in the Windsor Law community. On occasion, the rhetoric on some student issue has become quite acerbic and definitely uncivil. In these instances, a public letter from the Dean to students, faculty, and staff often engenders a less confrontational tone to the debate. I become particularly exorcized when rumours begin to circulate in the student body on some particular issue. I believe it is unprofessional to rely upon, let alone transmit to others, as fact, statements which are unproven, or more often, actually false. (Unfortunately, in our day, transmission to the whole world is possible by simply hitting the “send” key on one’s computer.) In these instances, a statement to the law school community is sometimes required. In all of these instances, the Associate Dean and I seek to remind the students that they are members of the legal profession and that these behaviours are a breach of their professional canon as lawyers and law students.

In summation, we believe that law schools have a primary leadership role in transmitting to students (i.e. our future lawyers) that they are now members of the legal profession and it is incumbent upon them to act with honesty and integrity, to refrain from misconduct, and to deal with others with respect and civility. We set the tone for this understanding of legal education through our promotional materials and our website as well as through the application of our codes of discipline and in our communications with students, both individually and collectively, when necessary.

#### **COMMUNITY AND PUBLIC SERVICE:**

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For example, most Universities have a policies on discrimination and harassment to which all students in the University are subject. The University of Windsor, **HUMAN RIGHTS POLICY**, Approved June, 1997, may be found at <http://web4.uwindsor.ca/units/hro/main.nsf/inToc/041FB5E3F277EC2A85256DF80069D5E9>.

As I indicated earlier, there is a further way in which law schools can lead and that is by encouraging in their students a culture of community and public service. This is often referred to as *pro bono* service, that is service that is *pro bono publico* – for the public good. A great deal has been written about the obligation of lawyers and law students to engage in *pro bono* service. In the profession, the rationale for imposing *pro bono* obligations are essentially twofold: (1) there is a value to our society in ensuring that the unmet need for legal services is met; and (2) there is a benefit to the providers of the legal services, both individually and collectively, to engage in such “charitable” works.<sup>14</sup> There are other benefits, for the lawyer and the law firm, that come from *pro bono* service including enhanced individual and firm reputation, morale, and job performance as well as higher levels of retention and recruitment. And for the legal profession in general, there is a more positive public image.<sup>15</sup> The vast majority of lawyers agree that *pro bono* service is desirable; they disagree more profoundly on whether *pro bono* service should be mandatory.<sup>16</sup>

The same rationales that support *pro bono* programs for the profession – servicing unmet need and engaging in charitable works – underpin public service programs in law schools. Similarly, the benefits for individual lawyers, law firms, and the legal profession are mirrored in the law school setting. *Pro bono* programs enhance reputation, assist in recruitment and retention of students, faculty, and staff, improve law school morale and student and faculty performance, and, generally, provide the law school and the university with a more positive image. There are other educational, occupational, and personal and professional development benefits as well. Public service programs help to bridge the gap between theory and practice, improve lawyering skills, provide networking opportunities with the bar, bench, and community, furnish mentoring

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<sup>14</sup> Deborah L. Rhode, *ACCESS TO JUSTICE*, Oxford University Press: 2004 at 146.

<sup>15</sup> *Ibid.*, at 147.

<sup>16</sup> This is a topic for another day. Professor Rhode, *ibid.*, discusses this matter at 148 - 153. In Ontario, we have opted for non-mandatory encouragement. Rule 3.01 of the **RULES OF PROFESSIONAL CONDUCT** provides: “Lawyers shall make legal services available to the public in an efficient and convenient way that commands respect and confidence and is compatible with the integrity and independence of the profession.” The Commentary to the Rule states: “It is essential that a person requiring legal services be able to find, with a minimum of difficulty or delay, a lawyer qualified to provide such services. The lawyer may assist in making legal services available by participating in the Legal Aid Plan and lawyer referral services, by engaging in programmes of public information, education or advice concerning legal matters, and by being considerate of those who seek advice but are inexperienced in legal matters or cannot readily explain their problems.” Rule XIV, Commentary 5, of the **CODE OF PROFESSIONAL CONDUCT** of the Canadian Bar Association is to the same effect. We can contrast this with the American Bar Association's **MODEL RULES OF PROFESSIONAL CONDUCT**, which state that “Every lawyer . . . has a responsibility to provide legal services to those unable to pay and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer.” Rule 6.1 go on to provide that “[a] lawyer should aspire to render at least [fifty] hours of pro bono publico legal services per year” primarily to “persons of limited means” or to “organizations in matters which are designed primarily to address the needs of [such] persons.”

and job shadowing opportunities, and so forth.<sup>17</sup> A further benefit of public service programs in law schools is known as the “trickle up” effect. Simply put, law students who engage in public service in law school are more likely to undertake *pro bono* service once they are admitted to the profession. Rhode describes the “trickle up” effect:<sup>18</sup>

By enlisting students early in their legal careers, these initiatives attempt to inspire an enduring commitment to public service. The hope is that, over time, a greater sense of moral obligation will “trickle up” to practitioners.

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<sup>17</sup> For a fuller discussion of these points, see Rhode, *ibid.*, at 156 - 160.

<sup>18</sup> Deborah L. Rhode, “Cultures of Commitment: Pro Bono for Lawyers and Law Students” (1999), 67 **FORDHAM LAW REVIEW** 2415 at 2416.

This motivated the American Bar Association to amend its standards of law school accreditation. Rule 302 (b) (2) to provide: “A law school shall offer substantial opportunities for: student participation in pro bono activities”<sup>19</sup> These revised ABA standards also encourage schools to address the “obligations of faculty to the public, including participation in pro bono activities”.<sup>20</sup> There is a continuing debate, however, over the usefulness of *pro bono* programs, both for the recipients of the services and for the law students providing the services, and how to improve the service delivery and the educational opportunities. There is an even greater debate over whether law students should be required to engage in public service in order to graduate. Once again, these debates are for another day.

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<sup>19</sup> See **RECODIFICATION OF ACCREDITATION STANDARDS**, Standard 302 (1996).

<sup>20</sup> *Ibid.*, Standard 404(a) (5).

There is one simple fact: the vast majority of students come to law schools because they want to help people and they demand the opportunities to do so. Consequently, law schools have, over the past decade, developed greater opportunities for public and community service. Each law school in this province operates at least one clinical program – the Student Legal Aid Service Society (SLASS) clinic – and a great many students provide legal services for the indigent by volunteering at these clinics.<sup>21</sup> Some schools operate more than one clinic or service.<sup>22</sup> Students also have the opportunity to engage in special interest working groups, internships, externships, and other programs that are engaged in social justice work. Some of these are domestic and others international in focus. *Pro Bono Students Canada*, which (I believe) has a “chapter” in each law school, matches community groups with students, who are willing and interested in assisting the groups, and then teams the students with lawyers, who agree to supervise the students’ work. This program has excellent potential to allow students opportunities to engage in public and community service.<sup>23</sup> Finally, there are students who, individually or in an organized and supported group, simply take the initiative to do “good”. There are countless ways in which these students assist the community.<sup>24</sup> It should be noted that even though I have drawn my

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<sup>21</sup> In addition to the excellent work done by our SLASS clinic, **COMMUNITY LEGAL AID**, in the area of provincial offences, minor criminal matters, and small claims litigation, our community legal aid clinic, **LEGAL ASSISTANCE OF WINDSOR**, deals with residential tenancy issues, benefits problems, and victims of crime cases. **LEGAL ASSISTANCE OF WINDSOR**, staffed by lawyers and law students and social workers and social work students, also engages in extensive community development work. The hard work of the staff and students of these clinics offers a tremendous benefit to the community but also provides the students with exposure to the importance of community involvement and a commitment to *pro bono* work.

<sup>22</sup> The **UNIVERSITY OF WINDSOR MEDIATION SERVICES** provides free, community based mediation services to members of the Windsor-Essex community. Students mediate conflicts from residential tenancies to small business to neighbourhood disputes. **MEDIATION SERVICES** also provides conflict resolution training to a wide variety of student and community groups. Our students attend local high schools and provide training in negotiation, mediation and conflict resolution skills to high school classes, peer mediation groups, Young Offenders, as well as on-campus organizations. **MEDIATION SERVICES** also partners with local not for profit organizations to provide site-specific conflict resolution services, including on-the-spot intakes and mediations at local agencies serving low-income clients. **MEDIATION SERVICES** is highly committed to meeting the conflict resolution needs of the Windsor-Essex community, particularly those who require options outside the traditional adjudicative system.

<sup>23</sup> Currently, at Windsor, the student volunteers of *Pro Bono Students Canada* are assisting **ALIVE! CANADA**, **CITIZENS ADVOCACY**, **HOSPICE WINDSOR-ESSEX COUNTY**, **COMMUNITY LIVING ESSEX COUNTY**, **ACTOR'S THEATER OF WINDSOR**, **FM-CFS CANADA**, AND THE **NISHINABWE-ASKI LEGAL CLINIC** in Thunder Bay.

<sup>24</sup> For example, during this current academic year, students groups at Windsor have been involved in assisting numerous community organizations: Women and the Law Association produced “The Vagina Monologues” which benefitted **HIATUS HOUSE**. They also support the **WHITE RIBBON CAMPAIGN** and assist **WINDSOR WOMEN WORKING WITH IMMIGRANT WOMEN**. The Black Law Students Association organized a “Win a Date with a Law Student” event to benefit the **CHILD HOPE FOUNDATION OF CANADA**. External Outreach Committee of the Students’ Law Society organizes a Charity Fashion Show to assist **EASTER SEALS** and also supports **BENSON**

examples from Windsor Law School programs and initiatives, every law school dean in Ontario and Canada can cite similar examples of his or her own. The bottom line is that the law schools of this province and country and their staffs and students are providing countless volunteer hours to their communities, providing those communities with an inestimable social or public good. The law schools, the universities, and the legal profession ought to be very proud of the work done in this area. I believe that the demonstrated commitment to social justice displayed by our law schools is a tangible example of professional leadership.

Nonetheless, there are still not enough opportunities to satisfy the demand. This is an important challenge for us in the law schools and an opportunity for the members of the profession to support access to justice work by students.

#### **MODELING PROFESSIONAL BEHAVIOUR AND CIVILITY:**

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**PUBLIC SCHOOL.** The Social Committee of the Students' Law Society supported the **JOURNALISTS FOR HUMAN RIGHTS WINDSOR LAW FELLOWSHIP** through their St. Patrick's Day party. The Windsor Italian Law Association (WILA) donated all proceeds from a soccer tournament to the **ITALIAN CANADIAN HANDICAPABLE ASSOCIATION (ICHA)**. The Court Jesters' Talent Show benefitted the **CANADIAN CANCER SOCIETY**. Ambulance Chasers benefits **FAMILY RESPITE SERVICES OF WINDSOR ESSEX**.

I have attempted, above, to make the case for the importance of declaring that our law schools are committed to ethical lawyering by speaking openly and often – and officially – about ethical issues. Law faculty members can, and should, be role models for their students. Lisa Lerman has noted:<sup>25</sup>

Law professors have a responsibility to model respect for the law and respect for people, and to behave professionally. Students are unlikely to remember much of the legal doctrine that they learn in law school, but they will remember how their teachers treated them. They will observe their teachers' conduct and internalize that behavior as "what lawyers do."

Thus, it is my belief that law schools, led by their deans, have a responsibility to promote a culture of ethical conduct in the educational enterprise – academic lawyers must be as committed to ethical practice as are members of the practicing bar. What does this mean in the law school setting?

First off, let me say that the vast majority of law professors I have known in my thirty-two years of teaching have been honest, caring, diligent individuals who were deeply committed to the law, to their law school, their law students, and legal education. There are some who do not meet this standard.. And, of course, we can all benefit from some self-reflection. As professors, we should be constantly examining and re-examining our own conduct, both inside the classroom and out, to ensure that we are maintaining and promoting the standards of professionalism and ethical lawyering.

Central to our positions, professors have primary obligations in teaching and mentoring. First and foremost, professors have an obligation to present a well planned and appropriately designed course to their students. There are many dimensions to this obligation. It is the professor's obligation to revise the course regularly to ensure that it is current with recent developments in legislation, jurisprudence, and even scholarly thought. Furthermore, students should know the structure of the course in advance, be informed of the evaluation methodology that will be employed, and be apprised of the expectations of the professor. As Paula Lustbader has noted:<sup>26</sup>

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<sup>25</sup> Lisa G. Lerman, "First Do No Harm: Law Professor Misconduct Toward Law Students" (2006), 56 **J. LEGAL EDUC.** 86 at 88 - 89.

<sup>26</sup> Paula Lustbader, " Principle 7: Good Practice Respects Diverse Talents and Ways of Learning", *Seven Principles for Good Practice in Legal Education* (1999), 49 **J. LEGAL EDUC.** 448 at 453-454.



Effective teachers maintain high expectations and explicitly communicate their expectations; they let students know ahead of time how they will evaluate student performance. They consider their expectations of students and their methods of evaluation when they plan their lessons. Such planning enables them to teach what they test and test what they teach.

Students should receive prompt, detailed, and honest feedback on their performance. Lustbader argues for multiple evaluations of student performance and underscores the importance of timely feedback:<sup>27</sup>

Effective teachers evaluate student performance more than once a semester and provide frequent feedback. Prompt feedback facilitates students' metacognitive awareness. Students need rigid feedback mechanisms to help them evaluate how they are learning so they can modify their study approaches. Frequent grading also provides teachers with necessary feedback on how well students are learning.

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<sup>27</sup> *Ibid.* at 454.

A word on evaluation and feedback. From my own personal experience, providing feedback is one of the most difficult tasks of a law professor to fulfil.<sup>28</sup> One would like to create multiple opportunities for evaluation – and, consequently, feedback on performance – in every one of the courses that one is teaching. Multiple opportunities for evaluation are particularly useful if the types of evaluation vary. In a full year Criminal Law course I taught at the University of Alberta, I was able to put in the following evaluation methods: Speaking to Sentence oral exercise before volunteer criminal lawyers, a short (1250 words) memorandum for the Judge on the same sentencing exercise, a Factum for a Criminal appeal, the moot argument on the same appeal, a case comment or, in some years, a final exam with both short answer and hypothetical questions. However, I must confess that I felt as if I was doing nothing that year except preparing for class and grading. Nor was this the only course I was teaching – in most years I taught a full year course in Constitutional Law as well with similar evaluation and feedback opportunities. What sometimes suffers in these cases is either the timeliness of the feedback or the detail.<sup>29</sup> Luckily, both Criminal Law and Constitutional Law were seminar courses. Multiple opportunities for evaluation and feedback, promptness in providing the feedback and detail in the feedback provided – all are important but they need to be balanced against the number of courses being taught, the number of students in those courses, and the other mentoring, counseling, and administrative functions the professor is performing. Because of inadequate resources, the fact is that most of the law schools in this country have an unacceptable student/faculty ratio that does not always permit the kind of ideal scenario that Lustbader envisions. Nonetheless, her views provide us with a standard to which we should aspire.

First and foremost, professors need to show up.<sup>30</sup> This proposition includes practitioners and judges who serve as sessional instructors or adjuncts. Cancellation of classes should be highly discouraged. Often, something else comes up – a conference abroad, a meeting on an important topic, a speaking engagement, a piece of interesting consulting – that we feel would either benefit us personally, our institutions, and our students. The default position ought to be – refuse the invitation; be in the classroom. Only upon very serious reflection, with an onerous standard

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<sup>28</sup> Practicing lawyers – particularly partners and senior associates – should not feel too self satisfied about this issue. When I speak to articling students or associates in the early years of their careers, one of the most common complaints about their law firms is that they are very poor at giving honest, detailed, timely, and frequent feedback on performance.

<sup>29</sup> I will not engage in a discourse here on the subject of “detail” in feedback but suffice to say I believe it to be extremely important. In essays and case comments, I tend to provide almost exhaustive and exhausting feedback – down to the spelling, grammar, punctuation, and citation. In exams, I tend to give out very detailed model answers or marking guides. The purpose is, firstly, to show the students where I believe they have gone astray and to point them to what I believe to be the right approach. In my view, students improve in their command of the subject matter, in their analysis of the issues, in their integration of various areas of the course, and even in their ability to communicate if they see a model to follow. As well, detailed feedback tends to dampen the students’ enthusiasm for grade appeals – an added bonus.

<sup>30</sup> I am reminded of Woody Allen’s line: “Ninety per cent of success is showing up”.

to be met, should one decide to cancel a class or classes. If one does cancel class, an automatic re-scheduler ought to pop up so that the students do not have their course of studies shorten in any particular subject. Cancelling classes sends students the message: "I do not feel a primary obligation to this institution, to legal education, or to you".

The professor ought to be on time for the class. As a former colleague of mine pointed out to me, "court starts at certain hour and, and as lawyers, we would always ensure that we were there on time – so to with your classes."<sup>31</sup> Furthermore, just as the lawyer needs to comply with time deadlines – whether court imposed or undertaken as a commitment to a client or another lawyer – the law professor must comply with deadlines undertaken as a commitment to his or her students. If I promised to hand back the grades or distribute a practice exam by or on a certain date, I ought to comply. This is compelled by the professional canons of trustworthiness and integrity. This has a broader application as well and applies to a law professors relationship to students outside of class, to staff members, and to colleagues. To put it more commonly, we ought to deliver what we say we would and on time.

As an auxiliary point to the foregoing discussion, I understand that one of the commonest complaints that clients have of their lawyers is that the lawyers are either unresponsive to the client or not timely in their responsiveness. So too, students often complain that professors are not responsive to questions and queries – particularly on email. This would, then, be a further obligation of the professoriate – to respond to student communication in a timely fashion.

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In North America, we try to arrive at the classroom so that the actual class can begin on time. This is not the custom in all countries, however. When I taught at the Hebrew University of Jerusalem, I arrived for my first class at, or prior to, the appointed hour. The students were still entering and became quite agitated that I was already there. After class, a small delegation of students came to my office to advise me of the custom that the professor arrives approximately 5-7 minutes after the scheduled time to allow for the students to get properly settled before he begins the lecture. When I told this to a colleague, she felt that it dated to a European custom that allowed the revered Professor to make a grand entrance into the classroom where the adoring, or at least respectful, students were awaiting his arrival. In defense of the 5-7 minute grace period, it does allow the student who is a bit late to enter the classroom without embarrassment, the student does not miss any of the lecture, and the professor is not interrupted (often repeatedly) as he attempts to launch into his lecture.

In the delivery of the course, it is axiomatic that the professor must be prepared for class. The professor must know the subject matter of the lecture and be fully conversant with the existing state of the law. Moreover, given that students have different learning styles, s/he should also have considered the most appropriate method for conveying the subject matter to the students. This demonstrates a commitment to continuing competence which is an essential component of professionalism. One will not, however, know the answer to every question posed in class. It is not unusual in the law school classroom for student to ask questions that are rooted in procedure and practice, even in theoretical courses. If one does not know the answer, it is important to admit it and indicate that you will try to find out the answer for the next class. This is what honesty demands and honesty and candor are required by our ethical canon as lawyers.

The atmosphere in the classroom must be one of respect and it is the professor who can encourage this by his or her actions and conduct. The professor must demonstrate respect for the law even when examining it critically, respect for the courts even while criticizing their decisions, respect for the legal profession even when probing its deficiencies. Students, also, deserve our respect. Every student has the right to human dignity, to be treated fairly without discrimination or bias, and to be free from abuse or harrassment. The professor must see to it that his or her conduct meets this standard and, moreover, has an obligation to ensure that the exchanges among the students also meets the standard of respect and dignity. This obligation, once again, extends beyond the classroom wall to the student body, the staff, and fellow professors.

In sum, the law professor must be a professional: s/he must show commitment to the law, to the law school, and the university; s/he must be prepared to work hard, maintain his or her competence, treat everyone with respect and dignity, care for one's students, be honest, prize integrity and trustworthiness, and tell the truth. In addition, we require our professor to be committed to access to justice and public service.

## **CONCLUSION:**

Although Ontario's law schools cannot guarantee a legal profession which places ethical lawyering at the heart of professional practice, they have an important leadership role to play in instilling a sense of ethical lawyering in their students who, ultimately, will become their graduates and the members of the practicing bar. Professor Frankfurter's statement that "the law and the lawyers are what the law schools make them" has a continuing validity in our own time. This leadership role extends beyond the creation of mandatory courses in professional responsibility – these are no panacea for what ails the profession. Curriculum development is an important issue which will have to be addressed by all law schools as part of a provincially mandated requirement to identify graduate outcomes for all programs. However, as we have seen in the United States, there are various methods for ensuring that law students receive an education on professional responsibility and ethics. Perhaps, more importantly, law schools, led by their deans, have a responsibility to establish an environment where high value is placed upon

ethical conduct in the educational enterprise. As I noted earlier, academic lawyers must be as committed to ethical practice as are members of the practicing bar. This means declaring that the institution is committed to ethical lawyering; speaking openly and often about ethical issues; dealing with students, both in the conduct of classes and outside of class, in a respectful and civil manner; treating staff and colleagues with respect and dignity; insisting upon ethical treatment of clients in law school clinics; producing scholarship which combines the best of theory, policy, and practice; committing oneself and one's institution to the principle of access to justice; and working on behalf of the public interest.

One thing is clear: we know very little about the legal profession in Ontario. We need to establish a research institution, modelled on the American Bar Foundation, which will produce high quality, interdisciplinary research on the legal profession and legal ethics. The Ontario Law Deans have promoted this idea a number of times over the past 7 years without success. The efforts of the **CHIEF JUSTICE'S ADVISORY COMMITTEE ON PROFESSIONALISM** to implant issues of ethics and professionalism into the consciousness of the profession, the judiciary, and the academy have, over the past four years been welcome and quite extensive. The Committee has produced eight excellent colloquia with a myriad of thoughtful papers. A second initiative on law school courses has led to national meetings among law professors who teach professional responsibility and a commitment to curriculum reform is developing.

There is one missing piece: support for high quality, interdisciplinary and empirical research on the legal profession and legal ethics. This should be the next initiative of the **CHIEF JUSTICE'S ADVISORY COMMITTEE ON PROFESSIONALISM**. I am sure the law schools and law deans of this province would be strong partners in such a project.