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**LEARNING TO ACT LIKE A LAWYER: A MODEL CODE OF PROFESSIONAL  
RESPONSIBILITY FOR LAW STUDENTS**

By  
David M. Tanovich  
(Associate Professor, Faculty of Law, University of Windsor)\*

"[Law] [s]tudents need to be treated as professionals so that they will learn to behave as professionals."<sup>1</sup>

**INTRODUCTION**

Law students are the future of the legal profession. How well prepared are they when they leave law school to assume the professional and ethical obligations that they owe themselves, the profession and the public? This question has led to a growing interest in Canada in the teaching of legal ethics.<sup>2</sup> It has also led to a greater emphasis on the development of clinical and experiential learning as exemplified in the scholarship and teaching of Professor Rose Voyvodic.<sup>3</sup> Less attention, however, has been placed on

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<sup>1</sup> Biernat, "Why Not Model Rules of Conduct for Law Students?" (1985), 12 *Fla. St. U.L. Rev.* 781 at 802.

<sup>2</sup> See Woolley and Bagg, "Ethics Teaching in Law School" (2007), *Can. Legal Educ. Ann. Rev.* 85; Sossin, "Can Ethics be Taught" (2007), 26 *Lawyers' Weekly* 5; Devlin, Downie and Lane, "Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools" (2007), 65 *Advocate* 671; Pitel, "The Teaching of Legal Ethics: Recent Developments in Ontario" (2005), 55 *J. Legal Educ.* 592; and, Downie, "A Case for Compulsory Legal Ethics Education" (1997), 20 *Dal. L.J.* 224. See further, the general discussion in "Reinvigorating Legal Education" in Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008), 46 *Osgoode Hall L.J.* 1 at 32-36. The Law Society of Upper Canada has also begun to take a more active look at the teaching of professional responsibility in law school. See Law Society of Upper Canada, *Licensing and Accreditation Task Force, Report to Convocation* (20 September 2007) at paras. 8-9, online: <http://www.lsuc.on.ca/news/b/conv/?i=12590>.

<sup>3</sup> At the time of her death in April, 2007, Professor Voyvodic was Academic Director of Windsor's two student clinics: Legal Assistance of Windsor and Community Legal Aid. As for her scholarship, see Voyvodic, "Lawyers Meet the Social Context: Understanding Cultural Competence" (2006), 84 *Can. Bar. Rev.* 563; Voyvodic, "'Change is Pain': Ethical Legal Discourse and Cultural Competence" (2005), 8 *Legal Ethics* 55; Voyvodic and Medcalf, "Advancing Social Justice Through an Interdisciplinary Approach to Clinical Legal Education: The Case of Legal Assistance of Windsor" (2004), 14 *Washington University Journal of Law*

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identifying the general ethical responsibilities of law students. This can be seen in the presence of very few Canadian articles exploring the issue;<sup>4</sup> and more significantly, in the paucity of law school discipline policies or codes of conduct that set out the professional obligations owed by law students.<sup>5</sup> Part I of the article provides a scan of the codes of conduct or discipline policies of fifteen (15) common law schools in Canada. It also examines the extent to which these law schools have publicly declared professionalism and ethics as a core mission of the school.

This article develops an idea that Professor Voyvodic and I talked about on a number of occasions. It argues that all law schools should have a code of conduct separate and distinct from their general University code and which resembles, with appropriate modifications, the relevant set of rules of professional responsibility law students will be bound by when called to the Bar. A student code of conduct which educates law students about their professional obligations is an important step in deterring unprofessional conduct while in law school and preparing students for ethical practice. In 1986, the American Bar Association issued a similar recommendation:

Law schools should have – as many do – a code of ethics, including procedures for dealing with disciplinary infractions. Ideally, we believe honor codes should be adapted, insofar as practical, from the *Model Rules of Professional Conduct* and the *ABA Standards for Lawyer Discipline and Disability Proceedings* ... Law schools should thereby introduce students

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*and Policy* 101; and, Voyvodic, ““Considerable Promise and Troublesome Aspect’: Theory and Methodology of Clinical Legal Education” (2001), 20 *Windsor Yearbook of Access to Justice* 111 at 119-121.

<sup>4</sup> My research only revealed one Canadian article on point. See Elman, “Creating a Culture of Professional Responsibility and Ethics: A Leadership Role for Law Schools” (Paper presented at the Eighth Colloquium on the Legal Profession: The Challenges of Leadership, University of Western Ontario, 25 May 2007), online: [http://www.lsuc.on.ca/media/eighth\\_colloquium\\_professional\\_responsibility\\_ethics.pdf](http://www.lsuc.on.ca/media/eighth_colloquium_professional_responsibility_ethics.pdf). In the United States, the issue has generated more academic attention. The seminal article in this area is Biernat, “Why Not Model Rules of Conduct for Law Students?” (1985), 12 *Fla. St. U.L. Rev.* 781. See also, Berenson, “Education Law: What Should Law School Codes Do?” (2005), 38 *Akron L. Rev.* 803; Willauer, “The Law School Honor Code and Collaborative Learning: Can They Coexist?” (2004), 73 *UMKC L. Rev.* 514; McCulley, “School of Sharks? Bar Fitness Requirements of Good Moral Character and the Role of Law Schools” (2001), 14 *Geo. J. Legal Ethics* 839; Bassler, “Public Access to Law School Honor Code Proceedings” (2001), 15 *Notre Dame J.L. Ethics & Pub. Pol’y* 207; and, Carlos, “The Future of Law School Honor Codes: Guidelines for Creating and Implementing Effective Honor Codes” (1997), 65 *UMKC L. Rev.* 937.

<sup>5</sup> For examples of such codes in the United States, see “Professional Conduct Code”, Emory Law, online: <http://www.law.emory.edu/current-students/registrar/professional-conduct-code.html>; “Law School Code of Conduct”, The John Marshall Law School, online: [www.jmls.edu/students/pdf/CodeofConduct.pdf](http://www.jmls.edu/students/pdf/CodeofConduct.pdf).

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from the outset of their careers to what it means to be subject to professional standards and processes.<sup>6</sup>

The idea of a law school code of professional responsibility raises a number of questions. *Why is it necessary to have a separate and distinct code of conduct?* Part II of the article provides a threefold response. First, law students are an integral part of the legal profession and a code governing their conduct should reflect this. Second, a code of conduct must be relevant to law students in order to ensure that it can inspire students to be ethical members of the profession. And third, as a practical matter, the last few years have witnessed a number of incidents at law schools that raise serious issues about the professionalism of law students. They include, for example, the UofT marks scandal, the Windsor first year blog and the proliferation of blogs such as [www.lawstudents.ca](http://www.lawstudents.ca) and [www.lawbuzz.ca](http://www.lawbuzz.ca) with gratuitous, defamatory and offensive entries. These and other similar incidents are chronicled in Part II. It is not clear that all of this conduct would be caught by University codes of conduct which often limit their reach to on campus behaviour or University sanctioned events. *What should a law school code of professional responsibility look like and what ethical responsibilities should it identify?* For example, should there be a *pro bono* obligation on students or a duty to report misconduct? These questions are addressed at the end of the article where a model code of professional responsibility for law school is provided.

## **PART I** **THE LAY OF THE LAND**

Over the summer of 2008, a scan of fifteen (15) common law schools in Canada was conducted.<sup>7</sup> The information was obtained from the law school website and from e-

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<sup>6</sup> ABA COMM'N ON PROFESSIONALISM, IN THE SPIRIT OF PUBLIC SERVICE: A BLUEPRINT FOR THE REKINDLING OF LAWYER PROFESSIONALISM, *reprinted in* 112 F.R.D. 243 (1986) at 269 [hereinafter ABA].

<sup>7</sup> These schools included: Victoria ("Victoria"), University of British Columbia ("UBC"), University of Calgary ("Calgary"), University of Alberta ("Alberta"), University of Saskatchewan ("Saskatchewan"), University of Manitoba ("Manitoba"), University of Windsor ("Windsor"), University of Western Ontario ("Western"), Osgoode Hall Law School of York University ("Osgoode"), University of Toronto ("Toronto"), Queen's University ("Queens"), University of Ottawa ("Ottawa"), McGill University ("McGill"), University of New Brunswick ("UNB"), and Dalhousie University ("Dalhousie").

mail correspondence with law school officials.<sup>8</sup> The purpose of the scan was twofold. First, to get a sense of how law schools convey their commitment to ethics and professionalism in their official documents. Second, to determine whether any Canadian law school employs a code of conduct incorporating or modelled after the Rules that govern lawyers in that jurisdiction.

*Official Document(s) Identifying Commitment to Professionalism and Ethical Development*

As Bruce Elman, Dean of Windsor Law, has observed “[a] mission statement which states clearly the commitment to ethical lawyering would, I believe, have an impact on prospective students.”<sup>9</sup> The same holds true for current students. Since many law schools do not have an explicit mission statement, other documents were examined such as a school’s five year strategic plan, student handbook or statement of objectives or values. Many of the law schools scanned (e.g. Victoria,<sup>10</sup> UBC,<sup>11</sup> Alberta,<sup>12</sup> Calgary,<sup>13</sup> Saskatchewan,<sup>14</sup> Manitoba,<sup>15</sup> Windsor,<sup>16</sup> Western,<sup>17</sup> Osgoode,<sup>18</sup> UofT,<sup>19</sup> Queens,<sup>20</sup> and

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<sup>8</sup> A copy of the completed scan was also e-mailed to all Deans and Associate Deans to ensure that all relevant material was examined.

<sup>9</sup> Elman, “Creating a Culture of Professional Responsibility and Ethics: A Leadership Role for Law Schools” (Paper presented at the Eighth Colloquium on the Legal Profession: The Challenges of Leadership, University of Western Ontario, 25 May 2007), online: [http://www.lsuc.on.ca/media/eighth\\_colloquium\\_professional\\_responsibility\\_ethics.pdf](http://www.lsuc.on.ca/media/eighth_colloquium_professional_responsibility_ethics.pdf) at 2 [hereinafter Elman].

<sup>10</sup> The *UVic Faculty of Law Policy on Academic Integrity* begins with “Students at the Faculty of Law are expected to observe high ethical standards not only as students but also as potential members of the legal profession. The Faculty trusts its students to act with propriety and integrity in their relationships with each other and with the Faculty, in both academic and non-academic endeavours”, online:

[http://www.law.uvic.ca/Current\\_Students/Academic\\_Regs/Academic-Regs.php#academic](http://www.law.uvic.ca/Current_Students/Academic_Regs/Academic-Regs.php#academic).

<sup>11</sup> See *infra* at note 23.

<sup>12</sup> The *Law Faculty Council Mission Statement* states that “[t]he mission of the Faculty of Law is to provide service to the community, to educate prospective lawyers and others seeking a thorough understanding of the law and the legal system, and to promote the acquisition of legal knowledge and the advancement of legal scholarship, in an environment based on equality, support, respect and recognition for the unique and diverse contributions of all its members.” See *Law Faculty Council Policy Manual (2007)* at 1, online: <http://www.law.ualberta.ca/Faculty--Research/Administration/Law-Faculty-Policy-Manual.php>.

<sup>13</sup> Two of the Calgary objectives are “[t]o familiarize the students with the ethical and professional responsibility dimensions of law and its practice”; and, “[t]o instill in students a sense of obligation to be full contributing members of their communities.” See *Program Objectives*, online:

<http://www.law.ucalgary.ca/programs/llb/objectives>. In addition, in discussing academic misconduct, Calgary observes that “[e]ntry into the legal profession requires the highest ethical conduct possible ...” See *Faculty Regulations*, online: <http://www.law.ucalgary.ca/current/regulation>.

<sup>14</sup> The *Mission Statement* states that “The College of Law at the University of Saskatchewan is committed to providing critical and reflective education so students have the best academic preparation for assuming

Ottawa<sup>21</sup>) have a document that identifies the importance of ethics and professionalism or, at a minimum, placing it, or some aspect of professionalism, as an integral learning outcome or law school value.

However, there is a significant degree of variance in the detail contained in these statements. Queens, for example, simply places “Professionalism” as a value in their *Law Strategic Framework (2005-2010)* without any definition or discussion.<sup>22</sup> Similarly, UBC’s *Dean’s Message* states that “UBC has become one of the best law schools in the world by ... \* providing practical skills training in advocacy, alternative dispute resolution, legal research and writing, problem solving and ethics ...”<sup>23</sup> while UofT refers to its “dedication to the public good” and to exposing its students “to the inherent value of public service” in its Degree Level Expectations.<sup>24</sup> Slightly more detail is provided by

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professional responsibilities in the humane operation of the legal system and for all vocations in which an understanding of law is necessary or helpful”, online: [http://www.usask.ca/law/about\\_us/index.php](http://www.usask.ca/law/about_us/index.php).

<sup>15</sup> The *Manitoba Law Frequently Asked Questions* page states that “As well, the program offers a sense of professionalism and emphasizes the professional responsibilities of lawyers in terms of ethics and service to clients and the public.” Online: <http://www.umanitoba.ca/law/newsite/faq.php>.

<sup>16</sup> See the discussion *infra*.

<sup>17</sup> The *Western Law: A Strategic Plan (2006)* identifies the Western Law School Values as:

- Leadership - in teaching, in research and law reform
- Diversity - in our curriculum, in our scholarly interests and in our student community
- Collegiality and Partnership - in our mission
- Responsibility - to one another, and to our law school, for the accomplishment of our goals
- Integrity - in our dealings with students, with one another, and with the community.

Online: <http://www.law.uwo.ca/info-general/StrategicPlan06.pdf>.

<sup>18</sup> Discussed *infra* at note 27.

<sup>19</sup> Discussed *infra* at note 24.

<sup>20</sup> Discussed *infra* at note 22.

<sup>21</sup> The *LLB Objectives* page states:

... As a professional program, the [Common Law] Section prepares students for entrance to the practice of law ... These professional and intellectual objectives are achieved in a manner which is mindful of the privilege and power often accorded to lawyers in our society. Our students are future leaders. Our programs concentrate on more than just the letter of the law. We address the spirit of the law and the ideal of justice. In our view, it is the duty of the program to respect and promote the full range of diversity reflecting the multi-lingual, multi-cultural and multi-racial characteristics of the women and men in our programs and in Canadian society.

Online:

[http://www.commonlaw.uottawa.ca/index.php?option=com\\_content&task=blogcategory&id=141&Itemid=136&pid=136&lang=en](http://www.commonlaw.uottawa.ca/index.php?option=com_content&task=blogcategory&id=141&Itemid=136&pid=136&lang=en).

<sup>22</sup> *Queen’s Law Strategic Framework 2005-2010* at 3, online: <http://law.queensu.ca/strategicPlanning.html>.

<sup>23</sup> Online at <http://www.law.ubc.ca/welcome/index.html>.

<sup>24</sup> *Degree Level Expectation*, online: < >. In its prospectus for future students, UofT notes that “[a]t UofT ... public service is a critical component of the faculty’s mission and of every law school student’s legal education. From the first day of law school, students are expected and encouraged to demonstrate social

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Western's *Strategic Plan* (2006) that identifies some of the elements of professionalism including "collegiality", "responsibility" and "integrity" as core values of the law school.<sup>25</sup> A strong statement of commitment to ethics is provided by Victoria<sup>26</sup> and Osgoode. For example, in its *Plan for the Law School 2006-2010*, Osgoode states that:

It is critical that our student body learn about and appreciate the role of law and lawyers in society, the role of our legal institutions, and how lawyers can assist their clients with an extremely high degree of ethics. ...

At the heart of Osgoode's values is the concept of a profound ethical concern, one that seeks to increase students' awareness of the relationship between law and society and their professional and scholarly responsibility not only to individual clients but also to the community at large ..."

... Legal ethics is a critically important aspect of a legal education. It is a fundamental tenet of a professional legal education.<sup>27</sup>

Windsor provides the most comprehensive approach with a number of official documents committing the school and its students to professionalism and ethical development. The *Statement of Objectives* states that the central goals of the school include:

5. To create a sensitive, caring and supportive environment for the study of law, enhancement of professionalism ...

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

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responsibility through their involvement in the many public interest opportunities ..." See *J.D. Program (2008-2009)*, at 17, online:

[http://www.law.utoronto.ca/prosp\\_stdn\\_content.asp?itemPath=3/6/0/0/0&contentId=1036&cType=web pages](http://www.law.utoronto.ca/prosp_stdn_content.asp?itemPath=3/6/0/0/0&contentId=1036&cType=web pages).

<sup>25</sup> *Supra* note 17.

<sup>26</sup> *Supra* note 10.

<sup>27</sup> *Plan for the Law School 2006-2010* at 6, 11, 13. On file with the author. See also, "Raising Ethical Lawyers" in the 2008 issue of *Continuum* (Osgoode Alumni Magazine) at 8, online:

[www.osgoodealumni.ca/documents/Continuum2008.pdf](http://www.osgoodealumni.ca/documents/Continuum2008.pdf).

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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 ...

- e. To foster in students an attitude of fairness and openness in dealing with others, free of bias.<sup>28</sup>

In 2006, Windsor created *LEXpectations* based on Duke University Law School's *Blue Notes*.<sup>29</sup> The document is given to every student and is posted outside the General Office:

- Engage Intellectually**  
[Text omitted]
- Embody Integrity**
- Be truthful, candid, fair, even if your actions go unnoticed; know that acting honourably often requires effort
  - Articulate your personal code of ethics in the context of the rules governing the Law School and the legal profession
  - Use ambiguous situations as an occasion to cultivate sound judgment, and avoid even the appearance of impropriety
  - Transform controversy and conflict at the Law School into opportunities to work constructively with others for the benefit of the community
- Lead Effectively**  
[Text omitted]
- Build Relationships**  
[Text omitted]
- Serve The Community**
- Volunteer for a service activity designed to benefit the community
  - Engage in pro bono activities before you graduate
  - Identify public issues that are important for you, form connections with others involved in these issues, and work to make a difference
- Practice Professionalism**
- Treat everyone with respect, even in the midst of disagreement
  - Collaborate with others to achieve common goals; be mindful of the appropriate time and place for competition
  - Take pride in your work and responsibility for your actions
- Live With Purpose**<sup>30</sup>  
[Text omitted]

Finally, Windsor has identified the following learning outcome:

#### **5. Responsible behaviour to self, others and society**

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<sup>28</sup> University of Windsor, Faculty of Law, *CALENDER 2006-2008* at 5. Online: [http://www.uwindsor.ca/units/law/lawTop.nsf/831fc2c71873e46285256d6e006c367a/27536300d0e48b4185256dca005a6f1b/\\$FILE/LawCalendarWEB.pdf](http://www.uwindsor.ca/units/law/lawTop.nsf/831fc2c71873e46285256d6e006c367a/27536300d0e48b4185256dca005a6f1b/$FILE/LawCalendarWEB.pdf). The statement should be read to include racialized students and students from sexual minorities.

<sup>29</sup> Elman, *supra* note 9 at 6.

<sup>30</sup> *LEXpectations – Lawyer Education and Development*, online: <http://www.uwindsor.ca/units/law/lawTop.nsf/SubCategoryFlyOut/C2C5531E08D8024E852572A400483B95>.

The responsible behaviour of a law student/lawyer requires a familiarity with the rules of professional conduct and the principle of civility as well as an understanding of the ethical obligations owed to clients, the legal system, the profession and the general public. Law students must be able to articulate these ethical obligations and be able to relate them to the behaviour expected of them throughout law school.<sup>31</sup>

### *The Current Content of Law School Discipline Policies*

In addition to mission/objective statements, there are other ways in which a law school can demonstrate and inculcate a commitment to the ethical development of its law students. These include the creation of a professionalism centre;<sup>32</sup> a mandatory ethics/professional responsibility course;<sup>33</sup> pervasive ethics teaching; a focus on clinical and experiential learning; internships; and, a code of professional responsibility for law students. The focus of this article is on the latter. Codes of conduct are an important part of the professionalization process in law school because their purposes include: to educate, to exhort and reinforce the values and goals of the profession, to inspire, and to regulate and deter misconduct.<sup>34</sup> In the context of a law school code, one commentator has noted that the purposes include “(1) to educate the students about appropriate ethical conduct; (2) to reinforce ethical principles already considered important; and (3) to serve as an incentive for students to act in ethical ways.”<sup>35</sup>

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<sup>31</sup> *Faculty of Law Learning Outcomes*. On file with the author. See also, *Raising the Bar: A Plan of Action for Windsor Law School 2006-2012* at 7, online: <http://www.uwindsor.ca/units/law/LawTop.nsf/inToc/B4AF84C655BCE4E38525714B004D6A75?OpenDocument>.

<sup>32</sup> The UofT Faculty of Law has recently established the “Centre for Legal Professionalism” whose goal is “to broaden and deepen our understanding of professionalism, ethics and public service, and the relationship between them.” Online: [http://www.law.utoronto.ca/visitors\\_content.asp?itemPath=5/12/0/0/0&contentId=1602](http://www.law.utoronto.ca/visitors_content.asp?itemPath=5/12/0/0/0&contentId=1602).

<sup>33</sup> Currently, eleven (11) law schools in Canada have either a mandatory ethics/professional responsibility course or a significant part of their first year curriculum devoted to legal ethics. These schools include UBC, Alberta, Calgary, Manitoba, Windsor, Western, Osgoode, Toronto, Ottawa, UNB and Dalhousie. See Dodek, “Canadian Legal Ethics: Ready for the Twenty-First Century at Last” (2008), 46 *Osgoode Hall L.J.* 1 at 34; and, Devlin, Downie and Lane, “Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools” (2007), 65 *Advocate* 761 at note 3. The importance of mandatory courses to ethical development has now been made in a number of Canadian articles and will not be addressed here. This academic literature is cited at note 2.

<sup>34</sup> See Berenson, “Education Law: What Should Law School Conduct Codes Do?” (2005), 38 *Akron L. Rev.* 803 at 810-811; 825-831; and, Bassler, “Public Access to Law School Honor Code Proceedings” (2001), 15 *Notre Dame J.L. Ethics & Pub. Pol’y* 207 at 209-213 [hereinafter Bassler].

<sup>35</sup> Bassler, *supra* note 34 at 210.

A scan of the common law schools reveals that the norm is for law schools in Canada to have a policy setting out only academic misconduct offences (e.g. Victoria,<sup>36</sup> Alberta,<sup>37</sup> Calgary,<sup>38</sup> Western,<sup>39</sup> Queens,<sup>40</sup> Ottawa,<sup>41</sup> and Dalhousie<sup>42</sup>) and then to rely on the general University policy or code of conduct and non-discrimination/harassment policy to govern non-academic misconduct.<sup>43</sup> With the exception of Victoria,<sup>44</sup> none of these policies begin with a discussion of the special obligations owed by law students.<sup>45</sup> Other law schools rely on their general University code for both academic and non-academic misconduct (e.g. UBC, Saskatchewan, Manitoba, Osgoode,<sup>46</sup> UofT,<sup>47</sup> McGill,<sup>48</sup> and, UNB<sup>49</sup>).

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<sup>36</sup> *Policy on Academic Integrity*, online:

[http://www.law.uvic.ca/Current\\_Students/Academic\\_Regs/Academic-Regs.php#academic](http://www.law.uvic.ca/Current_Students/Academic_Regs/Academic-Regs.php#academic) .

<sup>37</sup> Alberta only has an exam cheating provision as part of their *Law Faculty Council Policy Manual* at 64 (section 30.18), online: <http://www.law.ualberta.ca/Faculty--Research/Administration/Law-Faculty-Policy-Manual.php>. Reliance is placed on its University Code for other academic offences.

<sup>38</sup> Calgary only has exam cheating provision as part of their *Law Faculty Council Policy Manual* at 11. Online: <http://wcm2.ucalgary.ca/law/files/law/regulations.pdf>. Reliance is placed on its University Code for other academic offences.

<sup>39</sup> *Professional Responsibility Policy*, online:

<http://www.law.uwo.ca/Current/ProfessionalResponsibility.html>.

<sup>40</sup> *Faculty of Law Plagiarism and Academic Dishonesty Regulations*, online:

<http://www.queensu.ca/calendars/law/pg77.html> .

<sup>41</sup> *Faculty of Law Academic Fraud Policy*, online:

[http://www.commonlaw.uottawa.ca/index.php?option=com\\_content&task=blogcategory&id=35&Itemid=46&pid=46&lang=en](http://www.commonlaw.uottawa.ca/index.php?option=com_content&task=blogcategory&id=35&Itemid=46&pid=46&lang=en) .

<sup>42</sup> *Faculty Policy on Avoiding Plagiarism in Legal Writing*, online:

[http://law.dal.ca/Current\\_Students/Course\\_Selection\\_Materials/Regulations\\_Handbook/Plagiarism\\_Policy/index.php](http://law.dal.ca/Current_Students/Course_Selection_Materials/Regulations_Handbook/Plagiarism_Policy/index.php). See also, "H. Examination Regulations" in *Faculty of Law Calendar 2008-2009*, online: [http://dlm.cal.dal.ca/\\_LAWS.htm#1](http://dlm.cal.dal.ca/_LAWS.htm#1).

<sup>43</sup> The University of Ottawa is in the process of approving a Student Code of Non-Academic Conduct. It is one of the only universities in the country without such a code. See "The University of Ottawa consults its community on the student code of conduct", online: [http://www.media.uottawa.ca/mediaroom/news-details\\_1458.html](http://www.media.uottawa.ca/mediaroom/news-details_1458.html).

<sup>44</sup> *Supra* note 10.

<sup>45</sup> Victoria also has a policy governing clinic students. See *Student Conduct and Competence in Clinical Programs*, online: [http://www.law.uvic.ca/Current\\_Students/Academic\\_Regs/Academic-Regs.php#student](http://www.law.uvic.ca/Current_Students/Academic_Regs/Academic-Regs.php#student).

<sup>46</sup> *Osgoode Student Handbook (2007)* at I.4-I.7 (non-academic misconduct); II.30-II.37 (academic misconduct) (on file with the author). Osgoode does, however, have an anti-discrimination standard of conduct in its *Student Handbook* at I.2-I.4. It includes the following:

**A. Osgoode Hall Law School Equality Resolution**

... 2. Affirmation

Osgoode Hall Law School, its staff, students and faculty, subscribe to the public policy enunciated in the preamble to the *Ontario Human Rights Code*, and state expressly that they seek to do everything possible to enhance that policy within the Law School community. To this end the Law School affirms that every member of the community has a right to equal treatment without discrimination, and in particular, without regard to race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, political orientation, sex, age, marital status, sexual orientation, family status, or handicap.

Alberta is interesting because it has incorporated the Alberta Code of Professional Responsibility into its University code of conduct. Section 30.3.3(2) places an obligation on all law students to obtain and be familiar with the Rules of Professional Conduct while section 30.3.3(1) states that “[a] Student enrolled in a Professional Program is bound by and shall comply with the Professional Code of Ethics governing that profession and the practice of its discipline.” The problem is that violation of the Law Society of Alberta Code only becomes a disciplinary offence where the student is involved in a Practicum Placement.<sup>50</sup> Moreover, incorporation is not sufficient. If a law

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...3. Teaching and Learning

The faculty and students, in order to continue and expand efforts to promote freedom from discrimination both within the Law School and in society at large, undertake to consider the following measures in relation to teaching and learning:

- ... b. use of language in the classroom ... that is free from discriminatory stereotypes and references ...
- ...d. a heightening awareness of the existence of systemic discrimination.

**B. Osgoode Hall Law School Equality Procedures**

1.1 Standards of Conduct – General Principles

- a. Members of the Osgoode Community have a right to be free from discrimination or harassment directed at their race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, political orientation, sex, age, marital status, sexual orientation, family status or handicap.
- b. Any intellectual community thrives on the free and full expression of opposing ideas and values. However, only in an environment free of discrimination or harassment can the Law School fulfill its commitment to fostering an environment that promotes free and open inquiry by all members of the community. Students, staff and faculty have a responsibility to exercise their freedom of expression in a manner that promotes equality and justice.

<sup>47</sup> Faculty of Law Syllabus and Academic Handbook 2008-2009 at 6, online:

[http://www.law.utoronto.ca/students\\_content.asp?itemPath=2/2/12/0/0&contentId=442](http://www.law.utoronto.ca/students_content.asp?itemPath=2/2/12/0/0&contentId=442).

<sup>48</sup> Faculty of Law Calendar 2007-2008 at 9.2 Student Rights and Responsibilities and 9.5 Academic Integrity, online: <http://coursecalendar.mcgill.ca/law200708/wwhelp/wwhimpl/js/html/wwhelp.htm>.

<sup>49</sup> Online: <http://law.unb.ca/unbpolicies.html>. UNB does have its own language policy which states:

**a. Language Policy**

It is the policy of the Law Faculty Council that:

1. In all professional and law school related communication, members of the Faculty of Law community avoid language and conduct that can be understood reasonably to be sexist, racist, homophobic or for similar reason objectionable; and
2. Members of the Faculty of Law community use, as far as possible, gender neutral or gender inclusive language, except where gender exclusive language might usefully sensitize the listener or reader to stereotypical thinking.

Faculty of Law Regulations at C.18, online: <http://law.unb.ca/pdf/regulations.pdf>.

<sup>50</sup> Section 30.3.3(3) states:

A Student enrolled in a Professional Program who contravenes the Professional Code of Ethics governing the profession and the practice of its discipline commits an offence under this Code when, at the time of the alleged offence, the Student is involved in a Practicum Placement related to a course of study in a Professional Program.

school code is to achieve its purpose of education and aspiration, it must, as discussed later, specifically identify the professional obligations owed by law students. For example, a student's duty of competence and civility will be different from that owed by lawyers.

Windsor is the only law school that has its own autonomous discipline policy. It specifically incorporates some of the professional obligations owed by law students.<sup>51</sup> The policy begins with a discussion of law as an honourable profession, the duties owed by lawyers to their clients, the courts, the public and their fellow members, and the obligation of law students to act with both educational and professional integrity. With respect to the latter, the policy states:

The term "integrity" and its expression herein is drawn from the Canadian Bar Association Code of Professional Conduct, ch. 1, which has been adopted by the Law Society of Upper Canada. 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. (emphasis added)

... [I]t 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.<sup>52</sup>

The Windsor policy also extends the LSUC Rules of Professional Responsibility to clinic students and, as well, to "law students engaged in activities analogous to the practice of law such as mock trials and mootings." Perhaps, even more significant, is that "this

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Section 30.3.3(4) identifies specific conduct that constitutes unprofessional conduct when working in a Practicum Placement. See *Code of Student Behaviour*, online:

[http://www.uofaweb.ualberta.ca/gfcpolicymanual/content.cfm?ID\\_page=37633#38365](http://www.uofaweb.ualberta.ca/gfcpolicymanual/content.cfm?ID_page=37633#38365).

<sup>51</sup> Enacted as University of Windsor, Faculty of Law, Policy Statement on Student Discipline. Online: <http://www.uwindsor.ca/units/law/lawTop.nsf/inToc/3DCC59996A526AD585256D87005686A5> [hereinafter Windsor Discipline Policy].

<sup>52</sup> *Ibid* (emphasis added).

provision has been interpreted very broadly over time to include almost any student activity to which the *Code of Professional Conduct* could be applied.”<sup>53</sup>

While a good start, the Windsor policy has a number of shortcomings. With the exception of malicious harassment and improper conduct in the provision of legal services, all of the specific instances of misconduct relate to academic misconduct or misuse of campus facilities. More significantly though, with the exception of integrity, honesty and civility, the policy does not identify or discuss the other professional values that law students should aspire to. For example, there is no discussion of service, competence, confidentiality (with the exception of disciplinary proceedings) or the duty to not discriminate. It does also not address whether or not there is a duty on students to report misconduct. Of course, as Dean Elman has observed, these obligations may nevertheless exist through incorporation of the Rules of Professional Responsibility.

## **PART II** **WHY A LAW SCHOOL CODE OF PROFESSIONAL RESPONSIBILITY IS** **NECESSARY?**

### *(a) Law Students as an Integral Part of the Legal Profession*

In 1986, the American Bar Association took the view that “law students should be viewed as members of the legal profession from the time they enter law school.”<sup>54</sup> In addition, as noted earlier, they recommended that law students should be subject to a code of conduct that reflected this status. This is a very reasonable position to take. While law school is an academic institution, it is primarily, or at least has evolved in North America, to become a professional school.<sup>55</sup> Indeed, I suspect that well over ninety-five (95) percent of students come to North American law schools intending to

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<sup>53</sup> Elman, *supra* note 9 at 8.

<sup>54</sup> ABA, *supra* note 6 at 266. See also “Normative, and Somewhere to Go? Reflections on Professional Responsibility” (1995), 33 *Alta. L. Rev.* 924 at 929 where Devlin observes that “[s]tudents ... are active members of the legal community and also have much to contribute to the questions of professional responsibility.”

<sup>55</sup> Sullivan, Colby, Wegner, Bond and Shulman, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Wiley & Sons Inc., 2007) at 91-95. See also, American Bar Association, *Legal Education and Professional Development – An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) (the “MacCrate Report”) (Chicago: American Bar Association, 1992).

get called to the Bar.<sup>56</sup> And, even those who decide to teach, enter politics or work for an NGO will likely remain members of their relevant professional body and, therefore, subject to its ethical rules.

But perhaps, more significantly, admission to law school is the key to becoming a legal professional because there is no other meaningful vetting process besides the articling requirement. This point is made by Adam Dodek in his address to his first-year students:

Your entry into the legal profession begins on Day 1 of law school because (1) few students fail law school; and (2) few - if any - fail bar admission courses. You may "exit" either option by choice, but very few of you will have that choice made for you.<sup>57</sup>

Thus, the privileges of law school extend beyond education to the right to engage in student lawyering (defined broadly to include clinic work, *pro bono* work, mooting, internships, and clerking), to be a summer associate and ultimately the right to be a legal practitioner. The number of students involved in student lawyering in law school should not be underestimated. In addition to clinic work, more and more law students are serving our communities through *pro bono* placements. Indeed, *Pro Bono Students Canada* reports that it engages approximately 2,000 law students per year. Students working in these positions need to be aware of their professional obligations and ensure that their words and conduct do not further marginalize the very communities they are serving.<sup>58</sup> Public trust and confidence demands nothing less.

With these privileges come special obligations including the obligation to develop a professional conscience, to learn how to be professionally responsible,<sup>59</sup> a duty

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<sup>56</sup> The likelihood that students will choose law school as part of a liberal education as opposed to a professional school has and will likely continue to decrease with the rise in tuition.

<sup>57</sup> E-mail from Adam Dodek (21 August 2008) (on file with the author).

<sup>58</sup> See *Pro Bono Students Canada*, online: <http://www.probonostudents.ca/en/>.

<sup>59</sup> Or how to rely on "WWRVD." At Windsor, students who had the privilege of having Professor Voyvodic as a teacher and mentor coined this expression in her honour. It means "what would Rose Voyvodic do" when confronted with a difficult situation. In an acceptance speech she wrote for the Charles Clark award a few days before her death, Rose provided the following insight into her ethical yardstick:

of confidentiality, a duty to be culturally competent and a duty to protect the reputation of the law school and profession. Consequently, a law school's mission must include teaching all students about professionalism and demanding that they act like professionals.<sup>60</sup> This is recognized, for example, by Osgoode in its *Plan for the Law School 2006-1010*:

In providing a professional education, we believe it important to provide not just a sound training in legal reasoning and in the technical aspects of law, but also a deeper understanding of the social and ethical roles and responsibilities of members of the legal profession.<sup>61</sup>

In its *Consultation Paper* on the Canadian common law degree, the Federation of Law Societies' Task Force on the Canadian Common Law Degree similarly observed:

Both the profession and the legal academy have a responsibility to develop and nurture a sense of professionalism in students and lawyers.<sup>62</sup>

The authors of the Carnegie Foundation's *Educating Lawyers: Preparation for the Profession of Law* note that "[p]rofessional education aims to initiate novice practitioners to think, to perform, and to conduct themselves (that is, to act morally and ethically) like professionals."<sup>63</sup>

General University codes of student conduct are not up to the task.<sup>64</sup> They are usually more focussed on discipline rather than on creating a culture of professionalism.

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My own compasses of heart and mind have done me well in prioritizing the need to find social justice where we can, and, perhaps more importantly, in learning how to self-reflect so that I learn from my mistakes ... [T]he best way I have of telling myself I have made a mistake (ethical, legal, moral or just bad behaviour) or am about to make one is still whether or not my head feels right on my pillow at the end of the day, corny as that sounds.

See "Law community celebrates Rose Voyvodic's Life" *The Windsor Star* (30 September 2007); and, "Rose Voyvodic's Remarks as Recipient of the Charles Clark Award, 2007", *CAVEAT* 2007 Volume, Issue 3 at 2, online: [www.essexlaw.ca/caveat/Caveat2007-05.pdf](http://www.essexlaw.ca/caveat/Caveat2007-05.pdf).

<sup>60</sup> Downie relies on this argument in support of mandatory legal ethics education in law school. See Downie, "A Case for Compulsory Legal Ethics Education in Canadian Law Schools" (1997), 20 *Dalhousie L.J.* 224 at 226-227.

<sup>61</sup> At 3. On file with the author.

<sup>62</sup> Online: [http://www.flsc.ca/en/pdf/2008Consultation\\_paper.pdf](http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf) (September, 2008) at 21. One of the recommendations of the Task Force is a mandatory legal ethics course in law school.

<sup>63</sup> Sullivan, Colby, Wegner, Bond and Shulman, *Educating Lawyers: Preparation for the Profession of Law* (San Francisco: Wilen & Sons, 2007) at 22.

<sup>64</sup> Recall here that I am only examining the role of codes of conduct in inculcating professionalism. Earlier, I identified other important steps a law school can take including mission statements, ethics courses, clinical and other experiential learning.

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Nor are they adequate to teach law students about legal professionalism. They do not, generally speaking, address issues of public service, competence, confidentiality, or a duty to report misconduct. In addition, having a separate law school code of conduct focussed on the professional obligations of law students is an important part of experiential learning. Over the last decade, law schools have come to recognize that one of the most effective ways in which to get students to “think like a lawyer” is experiential learning including clinical work, internships and mootings. The same is true for the development of professionalism. As has been observed:

This cannot be learned through lecture or by reading – it can only be learned through the experience of knowing and understanding one’s professional obligations and faithfully carrying out those duties. At the same time, legal educators cannot teach professional responsibility solely by lecturing and giving reading assignments. Professional responsibility can be inculcated only by giving students responsibilities and by cultivating their professional and ethical growth. The development and use of an ethical code of conduct for law students may be an appropriate vehicle through which law students may gain additional responsibility.<sup>65</sup>

This learning process could be enhanced by giving law students an opportunity to participate in the structure and content of a code as well in the disciplinary hearings. A code and any subsequent opinions could also be used in class as a starting point for discussions of ethics and professionalism.

Finally, while one would expect all university students to act responsibly, one of the hallmarks of being a member of a profession is the expectation, as noted above, that its members have “special responsibilities by virtue of the privileges” associated with that profession.<sup>66</sup> As noted earlier, law school students enjoy privileges their other student counterparts do not. So, for example, general University codes do not usually impose a service obligation on its students or a duty to report misconduct. Nor do they always extend their jurisdiction into the private lives of students as far as may be

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<sup>65</sup> Biernat, “Why Not Model Rules of Conduct For Law Students?” (1985), 12 *Fla. St. U.L. Rev.* 781 at 804.

<sup>66</sup> Rule 1.03(1)(a), Rules of Professional Responsibility (Law Society of Upper Canada, 2008), online: <http://www.lsuc.on.ca/regulation/a/profconduct/>.

necessary to ensure that law students do not bring disrepute to the law school and profession.

And so, as Dean Elman has observed, “[t]he 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.”<sup>67</sup>

(b) *A Professionalism Crisis*

(i) In Practice

The last decade has witnessed a number of high profile incidents of unprofessional conduct ranging from the suppressing of evidence in a high profile murder case;<sup>68</sup> intemperate and uncivil conduct in the courtroom;<sup>69</sup> to the Treasurer of the Law Society of Upper Canada being suspended because of a sexual relationship with a client.<sup>70</sup> With these incidents has come a renewed emphasis on professionalism in the legal profession. We have seen the creation of an Advisory Committee on Professionalism in Ontario headed by the Chief Justice of Ontario (September 2000);<sup>71</sup> the promulgation of a working definition of professionalism;<sup>72</sup> the creation of a rotating Colloquium on the Legal Profession at Ontario’s six law schools; and, a code of civility enacted by the Advocate’s Society (Ontario) and adopted by the Canadian Bar

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<sup>67</sup> Elman, *supra* note 9 at 7.

<sup>68</sup> See *R. v. Murray* (2000), 144 C.C.C. (3d) 289 (Ont. S.C.J.).

<sup>69</sup> See *R. v. Felderof* (2003), 68 O.R. (3d) 481 (C.A.); and *Marchand v. Public General Hospital Society of Chatham* (2000), 51 O.R. (3d) 97 (C.A.).

<sup>70</sup> See *Law Society of Upper Canada v. Hunter*, [2007] L.S.D.D. No. 8. These incidents and others are chronicled in Dodek, “Canadian Legal Ethics: Ready for the Twenty-First Century at Last” (2008), 46 *Osgoode Hall L.J.* 1 at 9-13.

<sup>71</sup> See Law Society of Upper Canada, Chief Justice of Ontario’s Advisory Committee on Professionalism, online: < <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/> >.

<sup>72</sup> See Chief Justice of Ontario Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, “Elements of Professionalism” (October 2001, rev. December 2001, June 2002), online: <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/>. The identified ten “building blocks” of professionalism include: scholarship, integrity, honour, leadership, independence, pride, spirit, collegiality, service and balanced commercialism.

Association.<sup>73</sup> While these initiatives are largely focussed on the practicing bar, a code of conduct for law students would begin the professionalization process much earlier. As Jordan Furlong so aptly puts it in “Professionalism Revived: Diagnosing the Failure of Professionalism among Lawyers and Finding a Cure”:

By the time students finish law school, they will have spent three years learning about the purpose of the law, but not about the purpose of lawyers. It is unacceptable that a lawyer may progress three years into her career without receiving lengthy and illuminating instruction in legal professionalism. ... If lawyers do not understand the nature and importance of professionalism from the start, they will not believe it is important, and they will not practise it.<sup>74</sup>

(ii) In Law School

a. **High Profile Incidents at UofT and Osgoode**

Law schools have not been immune to the professionalism crisis. There have been a number of high-profile incidents of unprofessionalism at Canadian law schools. The most notable being three incidents in 2001: the UofT marks scandal involving two dozen students;<sup>75</sup> overtly racist acts at Osgoode Hall Law School targeting Black students during Black history month;<sup>76</sup> and, an Islamophobic article written by an Osgoode student in *Obiter Dicta*, a student newspaper.<sup>77</sup> A more recent incident involved a former Osgoode student, who was found to have engaged in conduct unbecoming a student licensee for selling papers he had written to a student in the MBA program at

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<sup>73</sup> The Advocates’ Society, *Principles of Civility for Advocates*, online: [http://www.advocates.ca/pdf/100\\_Civility.pdf](http://www.advocates.ca/pdf/100_Civility.pdf). See also, the discussion in Woolley, “Does Civility Matter” (2008), 48 *Osgoode Hall L.J.* 175 at 177.

<sup>74</sup> Paper presented at the Tenth Colloquium on the Legal Profession: Professionalism: Ideals, Challenges, Myths and Realities, University of Ottawa, 8 March 2008, online: <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/papers-from-past-colloquia/> at 11.

<sup>75</sup> In 2001, more than two dozen students were alleged to have misrepresented their first year grades to potential summer employers. Twenty-four students received some form of sanction. See Cowan, “Atonement: when 24 students at UofT’s Faculty of Law lied about their grades to land summer jobs, they tarnished the school’s reputation and risked their own futures” *Toronto Life* 36:9 (June 2001). See also, *Shanks v. Daniels* (2002), 57 O.R. (3d) 539 (S.C.J.).

<sup>76</sup> The acts included letters sent to two Black female law students. The letters contained newspaper clippings about crimes involving racialized suspects and the words “It disgusts me to see you at Osgoode.” In another incident, the eye of a Black woman whose picture was posted on the bulletin board of the Black Law Students Association was poked with a pin. See Keung, “Racism Targets York Law School: Black Students Look for Justice After Hate Letters” *Toronto Star* (22 February 2001). See also, “Notice to the Osgoode Community” (21 February 2001) (on file with the author).

<sup>77</sup> For example, the article condemned Islam as “oppressive, backwards and brutal.” See, “Osgoode Hall Apologizes for Anti-Islam Article” *National Post* (1 May 2001).

York University. The agreed statement of facts read in at the Law Society hearing revealed that Smith and another Osgoode student wrote papers for the same student while all three were in law school.<sup>78</sup>

### **b. Windsor Law Incidents**

It is difficult, however, to get a real sense of how many other incidents there are in law schools since most incidents go unreported or are not publicized outside of the particular law school community.<sup>79</sup> As I teach at Windsor Law, I have first-hand information about a number of incidents that reveal the scope of unprofessionalism in our midst. Some of these include:<sup>80</sup>

#### *Law 1: The Blawg for Beginners (The Unofficial Windsor Law Blog) (2006)*

A number of members of the class of 2009 decided to start a blog to “tell us about anything ... what’s goin’ on in the city what’s goin’ on in your life, what your beef is with school, you name it .. you write it, we’ll post it. That’s right. The colour of justice of our blog is not necessarily white.” The URL of the blog was <http://windsorlawblog.blogspot.com/>. The links on the first page included the UWindsor Faculty of Law Page; Turtle Rape and TubGirl. The blog reached well over one hundred and fifty (150) pages of entries before it was eventually removed from the web in early 2007 following my complaint to the Associate Dean.<sup>81</sup>

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<sup>78</sup> See “Toronto Lawyer Fined in Cheating Scandal” *Law Times* (26 January 2008).

<sup>79</sup> For a dated but still very relevant article describing incidents of violence against women at law schools, see Scassa, “Violence Against Women in Law Schools” (1992), 30 *Alta. L. Rev.* 809. See also, McIntyre, “Gender Bias within the Law School: ‘The Memo’ and Its Impact” (1987), 2 *Can. Jo. Women and the Law* 362.

<sup>80</sup> The Administration has responded to these and other incidents in a number of ways. First, the Dean issued two stern letters to the student body reminding them of the duty to act like professionals, including the duty not to discriminate, and to respect the dignity of their colleagues. Second, professionalism now features prominently in our first year orientation. Third, two consultants have been retained to provide training to faculty about addressing discriminatory incidents and comments. There are similar plans to provide cultural competence training to the student body. Fourth, there is now a requirement that all professors attach the University’s Human Rights Policy to their syllabi. And, finally, there is a commitment to overhaul our discipline policy.

<sup>81</sup> A copy of the blog is on file with the author.

The blog contained numerous offensive and demeaning entries targeting racialized and female professors as well as female students. The following entry reveals the tone of the blog:

**A Manly Man's Guide to "Friends with Benefits** (by Harry Ballsonya)

\*Disclaimer: before all you feminist lesbians get your boxer-briefs in a bunch, remember that this is JUST A JOKE. I'm not condoning insensitivity, sex with strangers, or sex with any of you. So relax! or better yet, if your easily offended by sexist humour, don't read this. \*\* Disclaimer to the Disclaimer: I know not all lesbians are feminists and not all feminists are lesbians. But I stand by the boxer-briefs.

[The author goes on to describe his intent to create a "warning" list for a number of different kinds of women that male law students might interact with and a "how funny it'd be to fuck her" scale]

...

2. *Girls you don't really know but is in law guy* – sure you've creeped her in A2J big group, but what do you know about her. She could potentially ruin your law career, because her feminist man-hating vagina powers are unknown. She could also be a lesbian. I'd stick to casual flirting on Tuesday's.

**Complexity-rating: 3/5**

**...But How funny it'd be to fuck her: 2/5 – two points cuz she could be freak**

[After seven entries, this part of the blog ended with the following]

Stick to the guidelines boys and everything will be fine ... actually don't even bother – A Kill is A Kill – happy hunting!

*The Failure to Report Homophobic Graffiti in the Men's Washroom*

For at least a period of over one year (September 2006 to November 2007), male students at Windsor Law who used the washroom in the commons area witnessed homophobic graffiti including "SAMIR IS GAY"; "ARAB IS GAY" and "40s A FAG" etched into the stalls.<sup>82</sup> Not a single student reported this homophobic and racist graffiti to the administration during this time. This incident is not in isolation. A number of students have reported incidents in which their colleagues openly expressed disgust at

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<sup>82</sup> I am aware of the 06 date because a gay student confided in me that he saw the graffiti as one of his first experiences in law school. The graffiti was reported to the Administration in 2007 as one of a number of homophobic incidents at the law school. The stalls have now been painted.

homosexuality. In November, 2007, the Dean and Associate Dean sent the following letter to all law students:

It has come to our attention that there have been a number of incidents during the Fall term which involved the use of abusive and hateful language which targeted our gay students in the Faculty of Law. Such behaviour is intolerable in any academic environment, and even more so in a Law School committed to Access to Justice and to the basic principles of equality. The Law School is committed to ensuring a safe and inclusive environment, and will not tolerate homophobic words and conduct.<sup>83</sup>

### *Cyber-Bullying*

In July of 2008, someone claiming to be a prospective Windsor student posted a message on [www.lawstudents.ca](http://www.lawstudents.ca). He or she appeared concerned about a number of incidents that were taking place at the law school including “allegations of homophobia” and wanted to know more about the school’s environment. In one of the responses, a Windsor law student named and attacked an openly gay first-year student:

... What you have here is someone who was in first year named [name deleted] that gets all hot and bothered about absolutely everything! Trust me, if you attend Windsor you will know who [name deleted] is within weeks! ... [H]e hit the roof over someone that used the word gay – yet another example of the gay community taking a word that they themselves changed the meaning of (i.e. gay used to mean happy) and is upset when anyone else tries to use it in their own way – as though one community can somehow “own” a word. It was blown out of proportion, there was absolutely, positive, no anti-gay intent behind it, which by definition would make it NOT a homophobic problem but rather just the wrong use of a word.<sup>84</sup>

### **c. Law Blog Entries**

One can also get a sense of the mind-set of many law students by examining some of the entries that have been posted on blogs like [www.lawstudents.ca](http://www.lawstudents.ca) and [www.lawbuzz.ca](http://www.lawbuzz.ca). Consider the following recent entry:

*“gay on Bay” [Law Buzz (16 July 2008)]<sup>85</sup>*

This entry begins with someone asking “how gay friendly are toronto firms?”<sup>86</sup> Some of the responses include:

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<sup>83</sup> (27 November 2007). On file with the author.

<sup>84</sup> Online, <http://www.lawstudents.ca/forums/viewtopic.php?t=15509&sid=9c760c19c1ffdfcca864fc3af8d89363>.

<sup>85</sup> Online: <http://www.lawbuzz.ca/index.php?showtopic=15545>.

"I can't stand queens..."

"To all the people calling homosexuals and their deviant pastimes "gay", I implore you to use the correct terminology. There's nothing happy or cheery about sodomy between two guys. Be honest and call them homosexuals, don't fall victim to the propaganda machine."<sup>87</sup>

I recognize that there are limitations in using these blogs as an unprofessionalism yardstick. For example, it is possible that non-law students participate on these blogs. However, I suspect that this is a relatively infrequent occurrence and cannot explain topics where there are a significant number of participants.

#### **d. Why Is This Occurring?**

Some of the incidents described above are expressions of hate, others likely the result of students struggling with having to confront issues of discrimination and difference in law school. There are other, more common and less offensive, incidents of unprofessional conduct that occur in law school every day. For example, there is much behaviour in law school that would be seen, by other students, as expressions of a sense of humour, however misguided rather than as discriminatory, demeaning or uncivil. This is often not the product of hate or bias but rather immaturity. It is also the product of cultural incompetence and the failure of students to recognize the ways in which words and conduct perpetuate stereotyping and marginalization.

Other reasons for a professionalism crisis in law school include the absence of a professional culture and technology. A lack of professional culture includes students failing to appreciate their professional obligations, professors failing to teach legal ethics pervasively, the lack of meaningful mission statements and the failure of law professors, including sessional faculty, to sometimes serve as appropriate role models. Technology

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<sup>86</sup> It is unclear whether this was a legitimate search for information or an attempt to evoke homophobic responses.

<sup>87</sup> For other offensive entries see, "*Pregnant in Law School*", online:

<http://www.lawbuzz.ca/index.php?showtopic=15415&st=20>; "*Law School and Girls*", online:

<http://www.lawbuzz.ca/index.php?showtopic=6443&st=0>; and, "*Law School and Boys*", online:

<http://www.lawbuzz.ca/index.php?showtopic=15459&hl=Law+School,and,Boys!>.

contributes to the problem because of its apparent anonymity and a “write now, think later” mentality.

Finally, a core cause of unprofessionalism is the consumer culture that pervades law schools. It would seem that most students view themselves as students or consumers rather than as law students and as part of a community of professionals. Indeed, as one researcher found in his survey of law students in the United States “... at least a third or more --- took the position that, despite being in a professional school, the concept of professionalism did not apply to them. Whatever professionalism might be ... would attract at graduation or after passing the bar examination ... In the meantime, they considered themselves to be ... merely consumers of an educational product provided by the law school.”<sup>88</sup> A law school code of professional responsibility, is one small step that can be taken, to ensure that students understand from day one, that they are an integral part of the profession and are obligated to act in a manner consistent with that role.

## CONCLUSION

In his thoughtful article on the state of legal ethics in the Canadian academy, Adam Dodek observes that “[l]egal ethics has grown as an academic discipline in terms of both scholarship and course offerings ... However, with these developments, we can also recognize that the ethical terrain yet to be explored is vast.”<sup>89</sup> One part of that unexplored terrain is the role and content of law school codes of conduct. This article has argued that all law students should be subject to a law school code of professional responsibility both to deter unprofessional conduct in law school but perhaps more importantly to prepare students for ethical practice by educating and inspiring them about the obligations owed by legal professionals.

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<sup>88</sup> Terrell, “A Tour of the Whine Country: The Challenge of Extending the Tenets of Lawyer Professionalism to Law Professors and Law Students” (1994), 34 *Washburn L.J.* 1 at 19-20.

<sup>89</sup> Dodek, “Canadian Legal Ethics: Ready for the Twenty-First Century at Last” (2008), 46 *Osgoode Hall L.J.* 1 at 48-49.

How well will a law school code of conduct modelled on the rules governing lawyers fulfill these goals?<sup>90</sup> This is the same question that so many ethics scholars have asked in relation to the Rules of Professional Conduct for lawyers. The general sentiment based on both experience and now some empirical research is that rules have little impact on ethical conduct either because lawyers ignore the rules; the rules are too general to address the myriad of ethical issues that arise on a day-to-day basis; or, because of the lack of vigorous and systemic enforcement.<sup>91</sup>

However, much of this discussion is less relevant in the law school context where the focus of a code should be on education and inspiration rather than regulation. Indeed, the central purpose of a law school code is to begin the professionalization of students. Moreover, even from a regulatory perspective, the range of activities that raise professionalism issues in law school are relatively small compared to actual practice and thus a code of conduct can be more comprehensive than codes that govern the conduct of lawyers. I am optimistic that a law school code, properly drafted and accessible, can inspire and educate. My experience is that law students are highly motivated and anxious to learn about their professional responsibilities. A law school code provides students with a starting point and structure to engage in a dialogue about professionalism and a yardstick with which to measure their conduct.

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<sup>90</sup> This question is explored in detail in Bereson, "Education Law: What Should Law School Student Conduct Codes Do?" (2005), 38 *Akron L. Rev.* 803 at 825-834; 849-851.

<sup>91</sup> See Wilkinson, Walker & Mercer, "Testing Theory and Debunking Stereotypes: Lawyers' Views On the Practice of Law" (2005), 18 *Can. J.L. & Jur.* 165; Macfarlane, "Mediating Ethically: The Limits of Codes of Conduct and the Potential of a Reflective Practice Model" (2002), 40 *Osgoode Hall L.J.* 49; Wilkinson, Walker & Mercer, "Do Codes of Ethics Actually Shape Legal Practice?" (2000), 45 *McGill L.J.* 645; Brockman, "The Use of Self-Regulation to Curb Discrimination and Sexual Harassment in the Profession" (1997), 35 *Osgoode Hall L.J.* 209; and, MacKenzie, "The Valentine's Card in the Operating Room: Codes of Ethics and the Failing Ideals of the Legal Profession" (1994-1995), 33 *Alta. L. Rev.* 859.

# MODEL CODE OF PROFESSIONAL RESPONSIBILITY FOR LAW STUDENTS<sup>92</sup>

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### **1.0 PREAMBLE**

**Law students are an integral part of the legal profession. As a result, they have a duty to embrace their legal education with spirit and enthusiasm and discharge all responsibilities honourably and with integrity. In their law school activities, a student should be competent, courageous, diligent, civil and ensure that their conduct is consistent with human rights and the interests of justice. In addition, in their personal lives, students must ensure that they do not act in a manner that will bring disrepute to the law school and legal profession.**

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<sup>92</sup> Much of the format, identification of relevant principles and commentary is based on the Law Society of Ontario's Rules of Professional Conduct (2008), online: <<http://www.lsuc.on.ca/regulation/a/profconduct/>> [hereinafter Rules of Professional Conduct (Ontario)] which are similar to the Rules across the country. Reliance on the rules governing lawyers is an important part of the professionalization process at law school since it is these rules that students will be bound by when called to the Bar.

**In light of the privileges afforded law students, they have duties and obligations that extend beyond those imposed on other students. For example, law students have a “duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations, and institutions.”<sup>93</sup> One of these institutions is the law school. These special duties include service and promoting access to justice. Above all, the conduct of law students must reflect that they are part of a community of professionals.**

#### Commentary

Professionalism has been defined by the Chief Justice of Ontario’s Advisory Committee on Professionalism as “a personal characteristic [that] is revealed in an attitude and approach to an occupation that is commonly characterized by intelligence, integrity, maturity, and thoughtfulness.”<sup>94</sup> There are a number of “building blocks of professionalism.” They include: scholarship, integrity, honour, leadership, independence, pride, spirit, collegiality, service and balanced commercialism.<sup>95</sup>

## **2.0 APPLICATION**

**This Code of Professional Responsibility “cannot address every situation” and a law student “should observe the rules in the spirit as well as in the letter.”<sup>96</sup> In interpreting and applying this Code, students and administration should be guided by its primary purpose which is to educate and inspire students about their professional obligations. Regulation and discipline are secondary purposes.**

## **3.0 PLEDGE**

**Each year, a copy of this Code will be provided to first-year students upon registration and they shall sign the following pledge:**

**I, [name of student] as a student entering [name of law school] understand that I am joining an academic community and embarking on a professional career. The law school community and the legal profession share important values that are expressed in the [name of law school] Code of Professional Responsibility. I have read the Code, I accept its terms as a condition of registration and I will conduct my academic, professional and personal life to honour those shared values.<sup>97</sup>**

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<sup>93</sup> See Rule 1.03(1)(c), *Ibid.*

<sup>94</sup> See Chief Justice of Ontario Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, “Elements of Professionalism” (October 2001, rev. December 2001, June 2002), online: <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/> at 1.

<sup>95</sup> *Ibid.*

<sup>96</sup> See Rule 1.03(1)(f), Rules of Professional Conduct (Ontario), *supra* note 92.

<sup>97</sup> This pledge is taken directly from the pledge in the Emory School of Law’s Professional Code of Conduct, online: <http://www.law.emory.edu/current-students/registrar/professional-conduct-code.html>.

#### **4.0 OFFENCES**

##### **4.01 Professional Misconduct**

**It is professional misconduct for a law student to violate (or to assist or induce another student to violate) the minimum standards of professional conduct set out in this Code when interacting with their colleagues, professors, law school administrators and other law school staff or when acting as student lawyers. Irrespective of the locus of such conduct, this section is triggered where the conduct reasonably relates to activities or matters connected with the law school.**

##### **4.02 Conduct Unbecoming a Law Student**

**A law student's duty to act with integrity, honesty, in good faith and in a manner consistent with the pursuit of justice does not end when he or she is no longer engaged in the life of the law school. Consequently, unjustified conduct in a law student's personal life which reflects negatively on the profession and law school may be subject to discipline. In interpreting this section, the following commentary must be taken into account.**

##### Commentary

It is recognized that law schools need to be careful about unduly interfering with the personal lives of its students. This section should be interpreted narrowly. Due consideration must be given to competing interests including the privacy and dignity of the student. Its reach should be limited to serious instances of misconduct which raise a question about the fitness of the student to be a member of a learning and professional community and which cannot be resolved in an informal manner. It is important to point out that this section is not intended to act as a bad faith tool for other students to report minor infractions in another student's private life in the guise of reporting conduct unbecoming a law student.

Non-exhaustive examples of conduct unbecoming a law student could include:

- (a) A conviction for a criminal offence committed during a student's law school tenure involving dishonesty, violence or the administration of justice (e.g. perjury or bribery). Not all convictions, however, will necessarily require sanction. For example, some acts committed as a form of civil disobedience that do not cause physical harm or serious property damage may be exempt from the jurisdiction of the Code;
- (b) Conduct that is motivated by hate or bias towards an equality-seeking group;
- (c) Participation in activities that are in some way related to the student's status as a law student which perpetuate the marginalization of equality-seeking groups whether or not that is the purpose of the participation. For example, such a link would exist where a group of law students decide to create an "unofficial" law school blog and post entries that demean women or sexual minorities;

- (d) Maliciously sending false or confidential information about a law student to potential employers, the Law Society or other members of the legal community (including graduate programmes);
- (e) Falsely representing oneself as a lawyer, whether knowingly, negligently or recklessly;
- (f) Sexual harassment as defined in 5.06; and,
- (g) Conduct which is inconsistent with the relevant provincial human rights policy.

## **5.0 MINIMUM STANDARDS OF PROFESSIONAL CONDUCT**

### **5.01 Academic Integrity - Plagiarism**

**A law student shall not knowingly engage in plagiarism on any written assignment or examination. The essence of plagiarism is the holding out of one's work or any part of it as original. Law students should consult the plagiarism policy of the law school or University and ensure strict compliance with it.**

#### Commentary

Examples of plagiarism include, but are not limited to:

- (a) failing to acknowledge the source of non-original ideas;
- (b) submitting work as one's own when, in fact, it was written or prepared, in whole or in part, by another person;
- (c) failing to properly cite the source of a direct or indirect quote.

When in doubt, law students should consult with their professor about proper attribution.

### **5.02 Academic Integrity - Examinations**

**A law student shall not engage in improper conduct in relation to examinations. Law students are obligated to become familiar with the examination regulations and policies of the law school or University and ensure strict compliance with them.**

#### Commentary<sup>98</sup>

Examples of improper conduct include, but are not limited to:

- (a) "marking an exam in such a manner to identify themselves to the professor, unless otherwise authorized;
- (b) consulting or copying from the examination of another student during an examination;
- (c) taking unauthorized material, or material in excess of that authorized, into an examination room; consulting or copying from unauthorized material during the course of the examination;

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<sup>98</sup> These examples are taken directly from the University of Windsor Discipline Policy, online: <http://www.uwindsor.ca/units/law/lawTop.nsf/inToc/3DCC59996A526AD585256D87005686A5>.

- (d) communicating with anyone concerning the subject matter of the examination in an unauthorized manner during the course of an examination; in cases where the same examination is being written at different times, communicating with another student concerning the subject matter of the examination where the result of such communication may be to give any student an unfair advantage in the examination;
- (e) falsely representing that all or part of a course requirement or examination has been fulfilled or submitted;
- (f) failing to submit an examination immediately upon the expiration of the time authorized for its completion;
- (g) intentionally providing the means or the opportunity for another student to engage in improper conduct relating to examinations.”

### **5.03 Academic Integrity - Other Misconduct**

**A law student shall not knowingly:**

- (a) **“Make a false statement of material fact or law in a class discussion, oral argument, written research assignment, or in any other academic exercise” for the purpose of misleading the audience;**
- (b) **“Forge or use any law school document in an unauthorized manner”;**
- (c) **“Steal any of the property or services of the law school or of others”;**
- (d) **“Obstruct another student’s access to legal knowledge by removing, altering, destroying, or concealing any library material”;**
- (e) **“Engage in any other conduct intended to interfere with another student’s right to learn”;**<sup>99</sup>
- (f) **Submit work from one course as original work in another course without the consent of the professor;**
- (g) **Misrepresent one’s grades;**
- (h) **Damage law school property including library books; or,**
- (i) **Violate an undertaking given to a faculty member or administration official with respect to an assignment or examination.**

### **5.04 Competence**

**Law students are expected to use reasonable diligence in completing their reading and all other assignments. They should apply “intellectual capacity,**

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<sup>99</sup> (a)-(e) are taken directly from Biernat’s model code reproduced in “Why Not Model Rules of Conduct For Law Students?” (1985), 12 *Fla. St. U.L. Rev.* 781 at 812.

**judgment and deliberation to all functions.”<sup>100</sup> Law students should also strive to become culturally competent.**

### Commentary

Law students should recognize that their future clients will share different lived experiences whether it be, for example, because of difference in class, sexual orientation, race, ethnicity, disability, mental disorder, age or religion and that, therefore, they must strive to develop cultural competence while in law school.

What is cultural competence? Professor Voyvodic offers the following approach. “In order to practise law in a culturally competent manner, I believe that we must “(1) value an awareness of humans, and oneself, as cultural beings who are prone to stereotyping; (2) acknowledge the harmful effects of discriminatory thinking and behaviour upon human interaction; and (3) acquire and perform the skills necessary to lessen the effect of these influences in order to serve the pursuit of justice.”<sup>101</sup> Law schools provide students with a number of opportunities to develop cultural competence including clinic placements,<sup>102</sup> critical seminar courses,<sup>103</sup> job shadowing placements, and, *Pro Bono* activities.

### **5.05 Civility and Good Faith**

**All law students are expected to be “courteous, civil, and act in good faith” with all members of the law school community.<sup>104</sup> In particular, it is unprofessional for a law student to use “misplaced hyperbole” or to “intimidate, sully or defame” in their communications with or about colleagues, law school administration, staff or professors.<sup>105</sup>**

**Law students should ensure, particularly when addressing issues relating to race, ethnicity, religion, gender, disability or sexual orientation that their class discussions and/or presentations are respectful and do not demean the dignity of their fellow students.**

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<sup>100</sup> See Rule 2.01(1)(f) of the Rules of Professional Conduct (Ontario), *supra* note 92.

<sup>101</sup> Voyvodic, “Lawyers Meet the Social Context: Understanding Cultural Competence” (2006), 84 *Can. Bar. Rev.* 563 at 564, 581-582 [hereinafter *Lawyers Meet the Social Context*]. See also, Way, “Reconceptualizing Professional Responsibility: Incorporating Equality” (2002), 25 *Dal. L.J.* 27; and, Jacobs, “People for the Footnotes: The Missing Element in Client-Centered Counselling” (1997), 27 *Golden Gate U.L. Rev.* 345

<sup>102</sup> See *Lawyers Meet the Social Context*, *supra* note 101 at 582-587.

<sup>103</sup> For a discussion of the role of “outsider” seminar courses in legal education, see Bakht, Brooks, Calder, Koshan, Lawrence, Mathen & Parkes, “Counting Outsiders: A Critical Exploration of Outsider Course Enrollment in Canadian Legal Education” (2007), 45 *Osgoode Hall L.J.* 667. See also, Lopez, “Training Future Lawyers to work with the Politically and Socially Subordinated: Anti-Generic Legal Education” (1988-89), 91 *W. Va. L. Rev.* 305.

<sup>104</sup> See Rule 6.03(1), Rules of Professional Conduct (Ontario), *supra* note 92.

<sup>105</sup> See *Law Society of Upper Canada v. Kay*, [2006] L.S.D.D. 112 at para. 19.

**All law students shall respond with reasonable diligence to all communications from professors and law school administration and staff.**

Commentary

Nothing in this rule is meant to deter the healthy exchange of ideas that is a critical part of legal education. Rather, it is designed to remind students to be self-reflective and ensure that comments are well-reasoned and not grounded in stereotypes.

**5.06 Sexual Harassment**

**A law student shall not sexually harass a colleague or any other member of the law school community including faculty and support staff. Sexual harassment is defined as:**

- “(a) any unwanted sexual attention or behaviour by a person who knows or ought reasonably to know that such conduct is unwanted; or**
- (b) any implied or expressed promise or reward for complying with a sexually oriented request; or**
- (c) any implied or expressed threat of reprisal, in the form either of actual reprisal or the denial of opportunity for the refusal to comply with a sexually oriented request; or**
- (d) any inappropriate verbal or physical conduct that has a focus on sexuality or sexual identity in what reasonably may be perceived as a hostile, intimidating or offensive manner; or**
- (e) the communication or display of material with a focus on sexuality or sexual identity which has the effect or purpose of creating a hostile or intimidating working or educational environment.”<sup>106</sup>**

Commentary

Examples of sexual harassment include:

- “■ verbal abuse including but not limited to graphic commentaries on the victim's body and sexual remarks which demean a person and are known or ought to have been known to be unwanted;
- using sexually degrading words to describe a person;
- insulting and offensive gestures, innuendoes, language, joking and or taunting about another person's body which causes awkwardness and or embarrassment;
- leering (suggestive staring) or other gestures;
- asking inappropriate questions about the person's sexuality or any sexual relationships past, present or future;
- unnecessary physical contact such as brushing up against a person's body, touching, patting, pinching and invasion of personal space for the purpose of sexually harassing a person;

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<sup>106</sup> University of Windsor, Human Rights Policy, Approved June, 1997, online: <http://www.uwindsor.ca/humanrightspolicy> [hereinafter Windsor Human Rights Policy].

- demanding sexual favours accompanied by implied or overt threats concerning a person(s)' employment (economic livelihood) grades (academic failure hence loss of future livelihood), reputation and/or letters of recommendation;
- sexual solicitation or advance made with implied reprisals if rejected;
- backlash or the threat of backlash, or retaliation or the threat of retaliation, for the lodging of a complaint or participation in an investigation;
- behaviour including but not limited to attention and/or conduct that is known or ought to be known to be unwanted after the end of a consensual relationship; and
- inappropriate display of sexually offensive material and /or pornography such as pin up posters (of any size), magazines etc.”<sup>107</sup>

### 5.07 Harassment

**A law student shall not harass a colleague or any other member of the law school community including faculty and support staff. Harassment is defined as “vexatious comment or conduct in relation to a person or group of persons which has the effect or purpose of creating a hostile or intimidating working or educational environment.”<sup>108</sup>**

#### Commentary

Examples of harassment include but are not limited to:

■ *Verbal Behaviour*

Using stereotypes to describe a particular group; name calling; insults; threats; slurs; degrading or unwelcoming remarks; jokes or innuendos about a person/persons in relation to the prohibited grounds in the Ontario Human Rights Code.

■ *Written Materials*

Displaying or distributing racist/sexist derogatory or otherwise offensive materials or graffiti; displaying or distributing derogatory pictures or cartoons.

■ *Physical Behaviour*

Making threatening or rude gestures; using physical intimidation or assault; leering; unwanted touching, kissing, patting, pinching; insulting actions or practical jokes based on the prohibited grounds in the Ontario Human Rights Code.

■ *Non-Verbal Behaviour*

Avoidance, exclusion and inaction: refusing to talk or work with another member of the University community because of personal, physical, racial or ethnic characteristics; condescension, paternalism or patronising behaviour; failure to provide accommodation for persons with disabilities or for persons engaged in religious observation unless the accommodation causes undue hardship.”<sup>109</sup>

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<sup>107</sup> These are taken directly from the Windsor Human Rights Policy, *supra* note 106.

<sup>108</sup> *Ibid.*

<sup>109</sup> These examples are taken directly from the Windsor Human Rights Policy, *supra* note 106.

## 5.8 Discrimination

A law student “has a special responsibility to respect the requirements of human rights laws ... and, specifically, to honour the obligation not to discriminate on the grounds” of “race, ancestry, place of origin, colour, ethnic origin, citizenship, religion, sex, sexual orientation, age, ... marital status, family status, or disability”<sup>110</sup> with respect to any law school activities. As the Law Society of Upper Canada recognizes in the Commentary to Rule 5.04 of its Rules of Professional Responsibility:

This rule sets out the special role of the profession to recognize and protect the dignity of individuals and the diversity of the community in Ontario.

Rule 5.04 will be interpreted according to the provisions of the Ontario Human Rights Code and related case law. ...

There is no statutory definition of discrimination. Supreme Court of Canada jurisprudence defines discrimination as including:

(a) Differentiation on prohibited grounds. ...

(b) Adverse effect discrimination. An action or policy that is not intended to be discriminatory can result in an adverse effect that is discriminatory.

...

Human rights law ... includes as discrimination, conduct which, though not intended to discriminate, has an adverse impact on individuals or groups on the basis of the prohibited grounds. ...<sup>111</sup>

## Commentary

The law school is committed to providing a safe working and learning environment, one that is committed to equality, ethical and professional development and social justice. As students prepare for practice, they should become familiar with the discrimination and harassment definitions and prohibitions set out in their relevant Code of Conduct.<sup>112</sup>

## 5.09 Confidentiality

**Students who are obligated to hold in strict confidence information acquired or discussed during Faculty Council meetings, committee work, other law school activities, including *pro bono* work or judicial clerkships shall not divulge any such information unless expressly or impliedly authorized by a law school or other official.**

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<sup>110</sup> See Rule 5.04, Rules of Professional Responsibility (Ontario), *supra* note 92.

<sup>111</sup> *Ibid.*

<sup>112</sup> See, for example, Rule 5.03 (Sexual Harassment) and Rule 5.04 (Discrimination) of the Rules of Professional Conduct (Ontario), *supra* note 92.

### 5.10 Clinics

In addition, to the principles set out in this Code, all students working in a clinic or legal organization while in law school are bound by the relevant Rules of Professional Responsibility including the rules relating to confidentiality, competence, advocacy, criminal defence work, interviewing witnesses, withdrawal, alternative dispute resolution and conflicts of interest. Students are also required to abide by any policies or regulations established by the clinic.

### 5.11 Law Society Student Regulations

Law students are required to familiarize themselves with and are bound by the Law Society protocols governing summer positions and articling.

## 6.0 MAKING LEGAL SERVICES AVAILABLE

Law students have, where practicable, an obligation to 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.”<sup>113</sup> In furtherance of that obligation, law students should strive to perform a minimum of forty (40) hours of *pro bono publico* (“for the public good”) legal services during their three years of law school.<sup>114</sup>

### Commentary

Access to justice is a serious problem in Canada. As the Canadian Judicial Council noted in their 2006-2007 Annual Report “... many Canadian men and women find themselves unable, mainly for financial reasons, to access the Canadian justice system.<sup>115</sup> There is a professional obligation on lawyers to address the problem.<sup>116</sup> In the United States, for example, Model Rule 6.1 of the ABA Code of Professional Conduct states that “a lawyer

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<sup>113</sup> See Rule 3.01 (Making Legal Services Available), Rules of Professional Conduct (Ontario), *supra* note 92.

<sup>114</sup> This number is based on the Osgoode model. In 2006, Osgoode imposed a public service obligation on all law students as a condition of their graduation. See “The Osgoode Public Interest Requirement”, online: [http://osgoode.yorku.ca/Quickplace/opir/Main.nsf/h\\_Toc/4df38292d748069d0525670800167212/!OpenDocument](http://osgoode.yorku.ca/Quickplace/opir/Main.nsf/h_Toc/4df38292d748069d0525670800167212/!OpenDocument).

<sup>115</sup> “Access to Justice: Meeting the Challenge” (2006-2007 Annual Report), Canadian Judicial Council, online: [www.cjc-ccm.gc.ca/cmslib/general/news\\_pub\\_annualreport\\_2006-2007\\_en.pdf](http://www.cjc-ccm.gc.ca/cmslib/general/news_pub_annualreport_2006-2007_en.pdf). For example, it has been reported that “[i]n some courts, more than 44 percent of cases involve a self-represented litigant.” See Rook, “Access to Justice is Critical for Canadians: Chief Justice” *National Post* (9 March 2007).

<sup>116</sup> See the discussion in Anand, “Fostering Pro Bono Service in the Legal Profession: Challenges Facing the Pro Bono Ethic” (Paper presented at the Ninth Colloquium on the Legal Profession: Legal Ethics in Action, Osgoode Hall Law School, 19 October 2007), online: <http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/papers-from-past-colloquia/> at 6-11. See also, Major, “Lawyers’ Obligation to Provide Legal Services” (1995), 33 *Alta. L. Rev.* 719.

should aspire to render at least fifty (50) hours of pro bono publico legal services per year.”<sup>117</sup> In Canada, the Canadian Bar Association established a Pro Bono Committee which called “for each member of the legal profession to strive to contribute 50 hours or 3% of billings per year on a pro bono basis.”<sup>118</sup> The CBA and PBLO (Pro Bono Law Ontario) have assisted lawyers and law firms meet this professional obligation.<sup>119</sup>

A similar obligation should be imposed on students. As Professor Rhode has observed “[b]y 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.”<sup>120</sup> Law students in Canada have the resources to fulfill this obligation through Pro Bono Students Canada, the only national pro bono student organization in the world. According to PBSC, it engages approximately 2,000 law students every year.<sup>121</sup>

## 7.0 REPORTING MISCONDUCT

**Law students should report serious incidents of professional misconduct or conduct unbecoming a law student to the Associate Dean where the student possesses information that would lead a reasonable person to believe that an offence has occurred. The failure to report may, depending on the circumstances, constitute professional misconduct. It is professional misconduct for a student to falsely accuse another student of conduct in violation of this Code.**<sup>122</sup>

### Commentary

Students are understandably reluctant to report suspected misconduct of their colleagues for fear of being labelled a “snitch” or more significantly the jeopardizing of a friendship. However, the legal profession is a self-regulating one. Indeed, this is one of the hallmark characteristics of a profession.<sup>123</sup> As such, there is a duty on everyone to

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<sup>117</sup> ABA MODEL RULE 6.1 VOLUNTARY PRO BONO PUBLICO SERVICE, online:

<http://www.abanet.org/legalservices/probono/rule61.html>.

<sup>118</sup> *Pro Bono Working Group Report*, Canadian Bar Association, online:

<http://www.cba.org/CBA/resolutions/2003res/03-04-M.aspx>.

<sup>119</sup> See “Pro Bono” (Canadian Bar Association), online: <http://www.cba.org/CBA/groups/probono/>; and,

“PBLO” (Pro Bono Law Ontario), online: <http://www.pblo.org/>.

<sup>120</sup> See Rhode, “Cultures of Commitment: Pro Bono for Lawyers and Law Students” (1999), 67 *Fordham L. Rev.* 2415 at 2416. See also the discussion in Elman, “Creating a Culture of Professional Responsibility and Ethics: A Leadership Role for Law Schools” (Paper presented at the Eighth Colloquium on the Legal Profession: The Challenges of Leadership, University of Western Ontario, 25 May 2007), online: [http://www.lsuc.on.ca/media/eighth\\_colloquium\\_professional\\_responsibility\\_ethics.pdf](http://www.lsuc.on.ca/media/eighth_colloquium_professional_responsibility_ethics.pdf) at 9-14.

<sup>121</sup> See Pro Bono Students Canada, online: <http://www.probonostudents.ca/en/>.

<sup>122</sup> For examples of findings of professional misconduct for the making of unfounded allegations of incompetence or unethical conduct of other lawyers, see *Law Society of British Columbia v. Goldberg*, [2007] L.S.D.D. 61; *Law Society of Upper Canada v. Kay*, [2006] L.S.D.D. No. 112; *Law Society of Upper Canada v. Carter*, [2005] L.S.D.D. No. 57; and, *Nova Scotia Barristers’ Society v. Murrant*, [1995] L.S.D.D. 257.

<sup>123</sup> See Rule 6.01(3) of the Rules of Professional Responsibility (Ontario), *supra* note 92 which places a mandatory obligation on all lawyers to report instances involving breaches of the Rules.

ensure that misconduct is addressed. This serves an important deterrent function and gives effect to the practical reality that misconduct will only come to the attention of the administration if it is reported by a fellow student.<sup>124</sup> There is a good faith obligation on students to ensure that their reporting is not based on unreliable information such as hearsay.

## 8.0 PROSECUTION

**Prosecution of offences under this Code shall be conducted in accordance with the law school's discipline procedure.**

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<sup>124</sup> For competing views on whether law school codes should contain a mandatory reporting clause, see Berenson, "Education Law: What Should Law School Student Codes Do?" (2005), 38 *Akron L. Rev.* 803 at 833-834. For a more general discussion of reporting obligations, see Greenbaum, "The Attorney's Duty to Report Professional Misconduct: A Roadmap for Reform" (2003), 16 *Geo. J. Legal Ethics* 259.