

CREATING A CULTURE OF PROFESSIONAL RESPONSIBILITY AND COMMUNITY SERVICE: A LEADERSHIP ROLE FOR LAW SCHOOLS¹

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INTRODUCTION

In 1927, then Professor, and later Supreme Court Justice, Felix Frankfurter wrote a letter to one Mr. Rosenwald: "In the last analysis, the law is what the lawyers are. And the law and the lawyers are what the law schools make them."² This statement represented a serious challenge to the legal academy of the time and, if anything, remains an equally grave challenge to our law schools in the 21st century. Clearly, Frankfurter envisioned a strong leadership role for law schools in ensuring that the profession was committed to ethical practice.

The discussion of law school leadership tends to focus on law school curricula, especially in the area of professional responsibility. Most often, the profession argues for a mandatory course in professional responsibility as a requirement for all students in all law schools.³ The underlying rationale for this argument is that such a course will, somehow, immunize all soon-to-be graduated lawyers against unethical conduct, sharp practice, and incivility just as newborns are immunized against polio, small pox, and diphtheria. Although I suspect that this is simply wishful thinking, we do not actually know whether or not the thesis is correct because we, in Canada and Ontario, have not engaged in properly designed studies to test its validity.

In fact, over the thirty plus years of my academic career, I believe that we have been wilfully neglectful of, if not deliberately hostile to, this area of scholarship. We, in the academy, have not been sufficiently supportive those individuals who have tried to carve out a specialty in research on the legal profession and legal ethics. Nor has the profession provided serious support or the necessary incentives for scholarly work on the profession and professional responsibility. This is in sharp contrast to law schools in the United States where, perhaps as a result of the Watergate scandal, there has been an explosion of such scholarship. There are, however, very encouraging signs in the increasing number of Canadian academics beginning to

¹ The original version of this paper was presented at the Chief Justice of Ontario's Advisory Committee on Professionalism, *Eighth Colloquium on the Legal Profession: The Challenge of Leadership*, London, Ontario, May 2007. A more expansive version of this paper is forthcoming in the Windsor Review of Legal and Social Issues. I would like to thank my research assistants, Danielle Asaad '09 and Carla Hanneman '10, for their assistance. Any errors are my own.

² Letter from Felix Frankfurter, Professor, Harvard Law School, to Mr. Rosenwald (May 13, 1927) as quoted in H.T. Edwards, "The Growing Disjunction between Legal Education and the Legal Profession" (1992), 91 Michigan Law Review 34.

³ See, for example, the recent discussion papers and reports of the Federation of Law Societies of Canada and the Law Society of Upper Canada: <http://www.flsc.ca/en/pdf/2008Consultation_paper.pdf; http://www.lsuc.on.ca/media/convnov08_landa2.pdf>.

devote at least some part of their research program to the legal profession and professional responsibility.

However, I do not want to focus on either curriculum reform or research and scholarship. I want to examine something less tangible -- setting a culture of professional responsibility in law schools. (It should be noted that I view a commitment to community service as being included in the term "professional responsibility".) My point is simple: we can have as many courses, even mandatory ones, on ethics as the timetable and student interest permits, and we can foster research and scholarship in the law schools -- but this will all be for naught if we do not operate our institutions and individually conduct ourselves in a manner that clearly indicates to our students that we take professional responsibility and community service seriously.

SETTING THE EXPECTATIONS

Let me begin at the beginning. It always comes as a shock to me, but students (and their parents) actually read our promotional materials. It is important to set the tone on professionalism and community service at this pre-enrolment stage. A mission statement, which declares clearly that a commitment to professional responsibility is a core value of the institution, would, I believe, have an impact on prospective students.

It is always prudent, on these kinds of issues, to examine the state of one's own house. Our *Statement of Objectives* at the University of Windsor Faculty of Law begins with the statement:

The Faculty of Law at the University of Windsor strives to serve society as a centre for the humanistic education of persons in law, for legal research, and for the provision of services which enhance the quality of life and access to justice...⁴

What follows is a lengthy series of goals which particularize this *Statement of Objectives*. One of the stated objectives, perhaps not positioned as prominently as it might be, speaks to the importance of professional responsibility and ethics. It reads as follows:

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,

⁴ University of Windsor, Faculty of Law, *Calendar 2006 – 2008* at 4.

and to examine and develop ethical and social values in relation to personal and professional responsibility, and in particular, to instil in the students a sense of social responsibility in the practice of law and the need for the examination of social structures with a view to contributing to such changes as may ensure social justice... [Emphasis Added]

One can glean from the objective stated above that we view issues of ethical lawyering as being intimately entwined with the pursuit of social justice or, as we state it, “access to justice”. Access to justice has been a guiding principle of the Law School since 1978. Fostering a commitment to access to justice, I would argue, also constitutes the promotion of ethical and responsible lawyering. Our *Statement of Objectives* includes a number of principles which touch upon our commitment to access to justice:

1. To study the nature and social function of legal institutions and to provide a general overview of the legal system in the larger social, economic and political context of society; ...
3. To encourage and support, scholarly endeavour in access to justice ..., to question fairness and the equality of opportunity to obtain legal services and to enjoy rights and freedoms, and to inquire into the nature and quality of the law and legal institutions; ...
4. To enhance access to justice through a broad and progressive admissions policy which will focus upon the personal attributes of the individual applicant, which will permit the realization of the vocation of persons to serve the community; through educational programs which extend legal services and provide information about the law and the justice system to those for whom that would not otherwise be available, and through the inculcation of a desire to reform the law to better serve the community and to aid the oppressed and disadvantaged;
- 6c. To encourage students to contribute meaningfully to society and to participate creatively in the process of legal development and social change...⁵

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

We, on this Faculty, take ethical matters very seriously. In my opinion, the vast majority of lawyers are, contrary to urban mythology, absolutely scrupulous in their ethical conduct. This is also what we expect from you *both as students and later as practicing lawyers*: that you conduct yourselves in an absolutely scrupulous manner, both

⁵ *ibid.* at 5.

professionally and personally. I cannot emphasize this enough. This faculty views your three years here at this Law School as part of your ongoing obligation to refrain from unethical and unprofessional conduct and to uphold the highest ideals of the legal profession. [Emphasis Added]⁶

We are trying to convey a very clear message here: “You are now in law school and the professional and ethical obligations of members of the legal profession are, to the extent that it is possible, applicable to you. We expect you to behave ethically now as a student, and in the future when you are a practicing member of the profession.” At the same time, we want the students to understand that, as law students and lawyers, they not only have a duty to refrain from misconduct but also have a responsibility to engage in public and community service. This is emphasized at a number of points during Orientation but it begins with the Dean’s address:

The legal profession is a helping profession and a caring profession. I believe strongly that it is a privilege to be a member of the legal profession. About six years ago, the *Canadian Lawyer Magazine* ran an article loosely entitled “Ten Lawyers Who Make a Difference. In the end, the magazine actually highlighted 11 lawyers including a husband and wife team. To the credit of this Law School, of the 11 lawyers featured in the article, four were graduates of Windsor Law. The article lauded these individuals for being caring and helpful individuals, both in their professional as well as their volunteer lives. The truth is that *Canadian Lawyer* could have found 100 lawyers who meet these criteria; indeed in my opinion, they could have probably found 1000's. I personally know countless numbers of lawyers who serve on boards and executives of community organizations of all sorts in numbers out of all proportion to our numbers in society. They serve in lay leadership roles in churches and synagogues, hospitals and nursing homes, symphony orchestras and opera societies, theatre companies, libraries and art galleries, police commissions, sports teams, both amateur and professional, and a host of foundations and other charitable undertakings. I have always been profoundly proud to be a member of the legal profession.⁷

It goes without saying that there has to be “follow through” on these ideals. Once again, there

⁶ See for example, Elman, “Address to the First Year Class 2006” at <<http://www.uwindsor.ca/units/law/lawTop.nsf/tovr/F1A01E2A562A7D9A852571EE006A2567>>.

⁷ *Supra* note 9.

are two sides to realizing on the rhetoric: first, the discipline process and, second, opportunities for public and community service. Every university has a code of student conduct or a discipline code to deal with academic offences, such as plagiarism and cheating, and non-academic offences, such as destruction of property, harassment, and so forth. In many instances, law schools have their own Discipline Policy. The purpose of having a separate policy is clear - it is designed to give effect to the professional elements of the law program and emphasize to the student that they are going to be held to standards similar to that of members of the legal profession, even while they are preparing educationally for a career in law.⁸

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

COMMUNITY AND PUBLIC SERVICE

As I indicated earlier, there is a further way in which law schools can lead and that is by encouraging in their students a culture of community and public service. This is often referred to as *pro bono* service, that is, service that is *pro bono publico* - for the public good. A great deal has been written about the obligation of lawyers and law students to engage in *pro bono* service. In the profession, the rationale for imposing *pro bono* obligations are essentially twofold: (1) there is a value to our society in ensuring that the unmet need for legal services is met; and (2) there is a benefit to the providers of the legal services, both individually and collectively, to engage in such "charitable" works.⁹ There are other benefits, for the lawyer and the law firm, that come from *pro bono* service including enhanced individual and firm reputation, morale, and job performance, as well as higher levels of retention and recruitment. And for the legal profession in general, there is a more positive public image.¹⁰ The vast majority of lawyers agree that *pro bono* service is desirable; they disagree more profoundly on whether *pro bono* service should be mandatory.¹¹

The same rationales that support *pro bono* programs for the profession - servicing unmet need and engaging in charitable works - underpin public service programs in law schools. Similarly, the benefits for individual lawyers, law firms, and the legal profession are mirrored in

⁸ My colleague, David Tanovich, has forcefully argued in favour of a Code of Professional Responsibility for Law Students. See "Learning to Act Like a Lawyer: A Model Code of Professional Responsibility for Law Students", Chief Justice of Ontario's Advisory Committee on Professionalism: *Eleventh Colloquium on the Legal Profession: Serving Communities*, Windsor, October 2008. <http://www.lsuc.on.ca/media/eleventh_colloquium_tanovich.pdf>.

⁹ Deborah L. Rhode, *Access to Justice* (Oxford University Press: 2004) at 146.

¹⁰ *Ibid.* at 147.

¹¹ This is a topic for another day. Professor Rhode, *ibid.*, discusses this matter at 148 - 153. In Ontario, we have opted for non-mandatory encouragement. See Rule 3.01 of the *Rules of Professional Conduct* and the accompanying Commentary.

the law school setting. *Pro bono* programs enhance reputation; assist in recruitment and retention of students, faculty, and staff; improve law school morale and student and faculty performance; and, generally, provide the law school and the university with a more positive image. There are other personal and professional, occupational, and educational development benefits as well. Public service programs help to bridge the gap between theory and practice, improve lawyering skills, provide networking opportunities with the bar, bench, and community, furnish mentoring and job shadowing opportunities, and so forth.¹² A further benefit of public service programs in law schools is known as the “trickle up” effect. Simply put, law students who engage in public service in law school are more likely to undertake *pro bono* service once they are admitted to the profession. Rhode describes the “trickle up” affect: “By enlisting students early in their legal careers, these initiatives attempt to inspire an enduring commitment to public service. The hope is that, over time, a greater sense of moral obligation will “trickle up” to practitioners.”¹³ This motivated the American Bar Association to amend its standards of law school accreditation. Rule 302(b)(2) now provides: “A law school shall offer substantial opportunities for: student participation in pro bono activities.”¹⁴ These revised ABA standards also encourage schools to address the “obligations of faculty to the public, including participation in pro bono activities.”¹⁵ There is a continuing debate, however, over the usefulness of *pro bono* programs, both for the recipients of the services and the law students providing the services, and how to improve the service delivery and the educational opportunities. There is an even greater debate over whether law students should be required to engage in public service in order to graduate. Once again, these debates are for another day.

There is one simple fact: the vast majority of students come to law school because they want to help people and they demand the opportunities to do so. Consequently, over the past decade law schools have developed greater opportunities for public and community service. Each law school in Ontario operates at least one clinical program - the so called Student Legal Aid Service Society (SLASS) clinic - and a great many students provide legal services for the indigent by volunteering at these clinics.¹⁶ Some schools operate more than one clinic or service.¹⁷ Students also have the opportunity to engage in special interest working groups,

¹² For a fuller discussion of these points, see Rhode, *ibid.*, at 156 - 160.

¹³ Deborah L. Rhode, “Cultures of Commitment: Pro Bono for Lawyers and Law Students” (1999), 67 *Fordham Law Review* 2415 at 2416.

¹⁴ See *Recodification of Accreditation Standards*, Standard 302 (1996).

¹⁵ *Ibid.* Standard 404(a) (5).

¹⁶ Our SLASS clinic, *Community Legal Aid*, offers services to students and qualified members of the public in the areas of provincial offences, minor criminal matters, and small claims litigation.

¹⁷ At Windsor, we operate two other community clinics. *Legal Assistance Windsor* deals with residential tenancy issues, benefits problems, and victims of crime cases. *Legal Assistance Windsor*, staffed by lawyers and law students and social workers and social work students, also engages in extensive community development work, supplying a tremendous benefit to the community but also providing students with exposure to the importance of community involvement and a commitment to *pro bono* work. The *University of Windsor Mediation Services* provides free, community based mediation services to members of the Windsor-Essex community. Students mediate conflicts from residential tenancies to small business to neighbourhood disputes. *Mediation Services* also provides conflict resolution training to a wide variety of student and community groups. *Mediation Services* partners with local not-for-profit organizations to provide site-specific conflict resolution services, including on-the-spot intakes and mediations at local agencies serving low-income clients. Once again, there is a benefit to the Community and the students through the activities of *Mediations Services*.

internships, externships, and other programs that are engaged in social justice work. Some of these are domestic and others international in focus. *Pro Bono Students Canada*, which (I believe) has a “chapter” in each Canadian law school, matches community groups with students, who are willing and interested in assisting the groups, and then teams the students with lawyers, who agree to supervise the students’ work. This program has excellent potential to allow students opportunities to engage in public and community service.¹⁸ Finally, there are students who, individually or in an organized and supported group, simply take the initiative to do “good.” There are countless ways in which these students assist the community.¹⁹ It should be noted that even though I have drawn my examples from Windsor Law School programs and initiatives, every law school dean in Ontario and Canada can cite similar examples of his or her own. The bottom line is that Canadian law schools and their staffs and students are donating countless volunteer hours to their communities and, thereby, providing those communities with an inestimable social capital and public good. The law schools, the universities, and the legal profession ought to be very proud of the work done in this area. Nonetheless, there are still not enough opportunities to satisfy the demand. This is an important challenge for us in the law schools but it provides an opportunity for the members of the profession to support access to justice work by students.

CONCLUSION

Although Ontario’s law schools cannot guarantee a legal profession which places ethical lawyering at the heart of professional practice, they have an important leadership role to play in instilling a sense of ethical lawyering in their students who, ultimately, will become their graduates and the members of the practicing bar. Professor Frankfurter’s statement that “the law and the lawyers are what the law schools make them” has a continuing validity in our own time. Law schools, led by their deans, have a responsibility to establish an environment where high value is placed upon ethical conduct in the educational enterprise. As I noted earlier, academic lawyers must be as committed to ethical practice as are members of the practicing bar. This means declaring that the institution is committed to ethical lawyering; speaking openly and often about ethical issues; dealing with students, both in the conduct of classes, in the use of library resources, as well as outside of class, in a respectful and civil manner; treating staff and colleagues with respect and dignity; insisting upon ethical treatment of clients in law

¹⁸ At the time this article was originally written, the Windsor student volunteers of *Pro Bono Students Canada* were assisting Alive!Canada, Citizens Advocacy, Hospice Windsor-Essex County, Community Living Essex County, Actor’s theatre of Windsor, MF-CFS Canada, and the Nishina-We-Aski Legal Clinic in Thunder Bay.

¹⁹ For example, at the time this article was originally written, students groups at Windsor had been involved in assisting numerous community organizations: Women and the Law Association produced “The Vagina Monologues” which benefited Hiatus House. They also supported the White Ribbon Campaign and assist Windsor Women Working with Immigrant Women. The Black Law Students Association organized a “Win a Date with a Law Student” event to benefit the Child Hope Foundation of Canada. External Outreach Committee of the Students’ Law Society organized a Charity Fashion Show to assist Easter Seals and also supports Benson Public School. The Social Committee of the Students’ Law Society supported the Journalists for Human Rights Law Fellowship through their St. Patrick’s Day party. The Windsor Italian Law Association (WILA) donated all proceeds from a soccer tournament to the Italian Canadian Handicapped Association (ICHA). The Court Jesters’ Talent Show benefited the Canadian Cancer Society. Ambulance Chasers benefited Family Respite Services of Windsor Essex.

school clinics; producing scholarship which combines the best of theory, policy, and practice; committing oneself and one's institution to the principle of access to justice; and working on behalf of the public interest.