

LEGAL ETHICS INSTRUCTION IN CANADIAN LAW SCHOOLS: LAYING THE FOUNDATION FOR LIFELONG LEARNING IN PROFESSIONALISM

DRAFT PAPER

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I INTRODUCTION

For over thirty years, Canadian Law Schools have been engaged in a moderately serious way in providing instruction to law students in the subject matter of “Legal Ethics” or “Professional Responsibility”, or “The Legal Profession.” This aspect of legal education has, however, been developed sporadically, with unclear and varying objectives, and with inconsistent commitments from the academy. Indeed, for much of this period, and until very recently, Canadian law schools generally regarded the subject matter of what I will call “Legal Ethics” as either an interesting but marginal course in the law school curriculum or as something that students would ‘pick up’ through either the culture of legal education or through ethical issues making ‘cameo appearances’ in various law school courses.

Over the years, calls for a more serious approach to the subject matter of Legal Ethics instruction have largely been ignored by Canada’s legal education community.¹ This is in sharp contrast to developments in other common law jurisdictions. Legal Ethics instruction in law schools in the United States has been essentially a mandatory part of their curricula since the late 1970s.² It has been a *de facto* mandatory part of legal education in New Zealand since early in this decade,³ and is a required component of Australian legal education.⁴ More recent initiatives have revived the issue and have revitalized the Canadian legal academy in its consideration of Legal Ethics instruction as a more central component of law school curricula and a more legitimate subject matter for intellectual as well as professional study.

¹ Alvin A. J. Esau, “Teaching Professional Ethics and Responsibility at Law School: What, How, and Why?” in Roy J. Matas and Deborah J. McCawley, eds., *Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985* (Montreal: Federation of Law Societies, 1987) 308.

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One aspect of this revitalization has been the enthusiasm with which the Chief Justice of Ontario's Symposia on Professionalism have been received by Ontario law schools and by the profession generally. Another has been the interest shown by the Law Society of Upper Canada (LSUC) in the state of Legal Ethics instruction in Canadian law schools and the subsequent moderation of the LSUC's commitment to Legal Ethics instruction in those aspects of professional legal education that fall within its authority and mandate. A more recent development – less a revitalization than a pending development – is the potential that the Federation of Law Societies Task Force on the Approved Canadian Common Law Degree will recommend that a course in Legal Ethics become part of the required curriculum at Canada's common law schools, and Law Societies in Canada's common law provinces adopt such a recommendation.

The case for Legal Ethics instruction to take a more central place in the legal education universe is a complicated one, and the purpose of this paper is not to restate the various arguments in support and in opposition. Rather, the purpose of this paper is to examine the evolution of legal ethics instruction in Canadian law schools over the past 20 years, with particular emphasis on the present state of affairs and the present state of law schools' commitment to Legal Ethics instruction. This examination serves two objectives. The first – important in itself but less relevant to the themes of Symposium - helps to identify how far Canadian law schools have come in relation to Legal Ethics instruction in our law schools. This provides a sense of how far Canadian law schools have come in voluntarily embracing Legal Ethics as a core dimension of their instructional programs, and how far they would have to go to meet professional directives in relation to this aspect of their curricula, if such professional directives are 'issued'. Imbedded in this objective are important matters related to the very nature of Legal Ethics instruction in the legal academy – who would teach the subject, how it will be taught, what will be the course objectives and course content – that are liable to be affected by whether it is a development from 'within the academy' or externally imposed. These are touched on in the paper to some extent.

The second objective of the paper is to provide a sense of what is occurring within Canadian law schools in the area of Legal Ethics instruction so that those involved in legal education at subsequent stages of the 'legal education continuum' can have greater confidence in the 'platform' or foundation in Legal Ethics instruction that has been laid by law schools. This will facilitate the design of post-law school instruction in Professionalism that can best benefit the 'student' of such instruction, benefit the legal profession and ultimately the public interest.

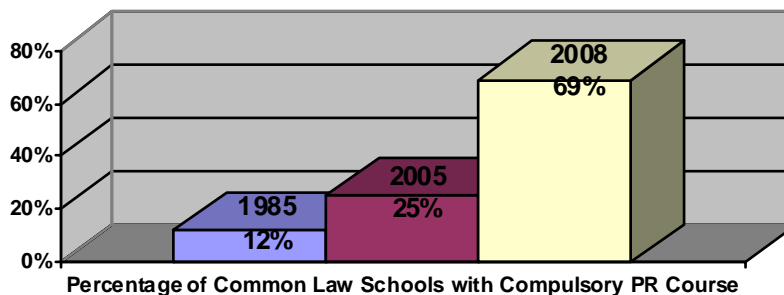
What follows are a series of descriptions and charts that collate and analyze the results of three surveys of Canada's common law schools, with particular emphasis on the 2008 survey. A number of conclusions are drawn together at the end of the paper

II THE EVOLVING STATE OF LEGAL ETHICS TEACHING AT CANADA'S COMMON LAW SCHOOLS – 1985 TO 2008

A. The Evolution of Compulsory Legal Ethics Curriculum

In 1985, only two schools (12% of schools) had a compulsory Legal Ethics course. These were University of Manitoba (Manitoba) and University of Alberta (Alberta). In most other law schools there was a course offering, usually a seminar course taken by a limited number of students, but in some law schools no course at all was offered. In 1988, Dalhousie Law School (Dalhousie) implemented a compulsory Legal Ethics course.⁵ By 2005, four schools (25% of schools) offered a compulsory course. These were Manitoba, Alberta, Dalhousie and the University of Western Ontario (Western), Western having introduced a compulsory first year course in 2005.

By 2008, there was a significant shift in this aspect of law school curriculum in Canada, in terms of the adoption of compulsory Legal Ethics courses. Of the 16 schools that responded to the 2008 survey, the following 11 schools, or 69%, have made Legal Ethics a compulsory course: University of Victoria (UVIC), University of Calgary (Calgary), Alberta, Manitoba, University of Toronto (Toronto), Osgoode Hall Law School (Osgoode), Western, McGill University (McGill), University of Ottawa (Ottawa), University of New Brunswick (UNB) and Dalhousie. Of these 11 schools, UVIC, Toronto, Calgary and Ottawa offered legal Ethics as a compulsory component of first year, either in the form of a bridge week or as part of a compulsory first year course. These law schools also reported offering upper year elective Legal Ethics courses in addition to the compulsory first year Legal Ethics component. McGill offers Legal Ethics as a compulsory second year course and the remaining five schools (UBC, Saskatchewan, Queens, Windsor and Moncton) offered Legal Ethics as an elective course. While one might quibble about the degree to which an offering as part of a bridging program of limited duration, nevertheless, it shows the degree to which Canadian law school have begun to take the subject matter seriously within their programs.



⁵ Brent W. Cotter, *Professional Responsibility Instruction in Canada: A Coordinated Curriculum for Legal Education* (Conceptcom: 1992) at 2-17.

B. Estimates of Student Enrollment

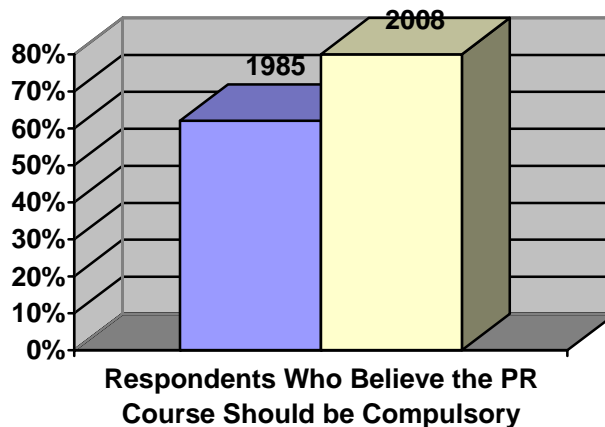
In 1985, Cotter estimated that not more than 25% of law students in Canada took a course in Legal Ethics.⁶ By 2008, these estimates changed considerably. .

An examination of class sizes at the various Canadian common law schools, combined with the reported numbers of students in Legal Ethics courses that were reported by survey respondents provided the following results. At the 11 schools with compulsory PR courses, 100% of students took the PR course. By comparison, at the five schools with elective PR courses (University of British Columbia (UBC), University of Saskatchewan (Saskatchewan), University of Windsor (Windsor), Queens University (Queens) and University of Moncton (Moncton) approximately 41% of all students took a Legal Ethics course. At Saskatchewan, 75 out of 115 students, or 65% took the course. At Queens, about 70 out of 161 students, or 43% of students took the course. At Moncton, 21 out of 39 students, or 54% took the course. At Windsor, about 15 out of 205 students, or 7% of students took the course. UBC did not respond to this question.

Combining compulsory and elective courses, approximately 80.5% of a year's cohort of students at Canada's common law schools in Canada a PR course in 2008.

C. Instructor Perspectives on Legal Ethics as a Compulsory Course

In 1985, 10 out of 16 respondents, or 62%, indicated they believed Legal Ethics should be a compulsory course in their law school curriculum.⁷ In 2005, this information was not available as the majority of schools did not respond to this question. By 2008, the number of instructors who believed PR should be a compulsory course in their law school curriculum increased to 80%.



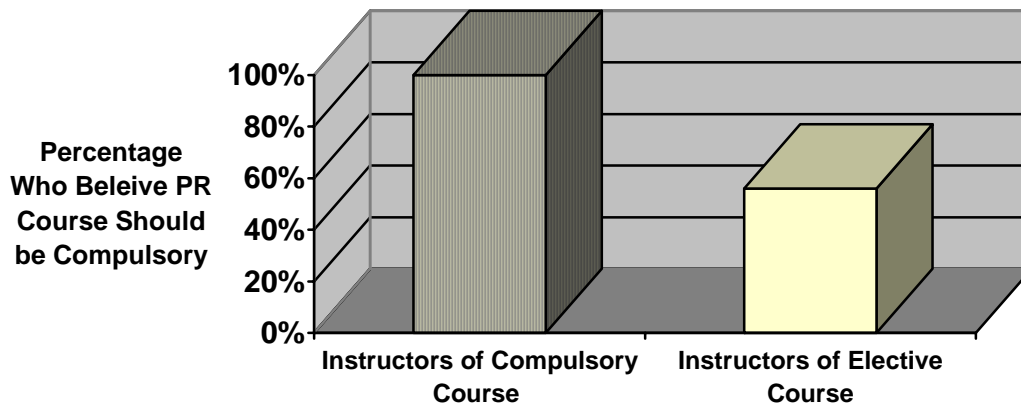
⁶ Cotter, *supra* note 1 at 2-20.

⁷ *Ibid.* at 2-21.

When asked whether or not PR should be a compulsory course, the opinions of instructors of compulsory courses views had changed from 2005 to 2008, and are noticeably different from those who teach optional or elective courses.

In 1985, this information was not available. In 2005, five instructors taught compulsory sections of the course. Of these five instructors, two indicated that the course should remain compulsory, two did not respond to the question and 1 indicated that the course should be elective. Of instructors who taught compulsory PR courses and responded to the 2008 survey, 100% believed the course should be compulsory. Of those who taught elective Legal Ethics courses, 56% were of the opinion that the course should be compulsory. In some cases those who taught elective courses and were of the opinion that their course should remain so were teaching at law schools that already have a mandatory Legal Ethics course or a mandatory Legal Ethics component of their first year program.

2008 Instructors' Views on Compulsory Curriculum



D. Sections and Sizes of Classes

In 2008, three schools with compulsory first year bridge weeks taught the Legal Ethics course as one section; this section was then broken down into smaller groups. All other schools with compulsory Legal Ethics courses offered multiple sections of the course. Most schools with elective upper year Legal Ethics courses offered one section of 10-50 students, with the average size being 25 students.

E. Number of Instructional Hours

In 1985, over half of the courses were offered as three-hour-per-week courses for one semester.⁸ The other offerings, with the exception of Calgary, were two-hour, one

⁸ *Ibid.* at 2-17

semester courses.⁹ In 2005, 11 out of 15 schools offered a one semester course for 3 hours per week. The other offerings were two-hour, one semester courses. In 2008, the majority of schools offered a one semester course for 3 hours per week. A minority of schools offered the course for 2 hours per week. One criticism of the 2 hour per week course was that it did not allow sufficient time for in-class simulations and exercises.

F. Where the Course is Taught Within the Law School Curriculum

The following calculations are based on the number of responses to the survey, rather than the number of common law schools in Canada. The totals therefore exceed 100% of the common law schools in the country.

In 1985:

- 2 sections of Legal Ethics were offered in first year
- All other schools offered Legal Ethics courses in either second or third year¹⁰

In 2005:

- 3 sections of the course were taught in first year
- 3 sections of the course were taught in third year
- 14 sections of the course were taught in either second or third year

In 2008:

- 6 sections of the course were taught in first year
- 5 sections were taught in second year
- 7 sections were taught in third year
- 12 sections of the course were taught in either second or third year

G. Instructors' Views on the Location of Legal Ethics Within the Curriculum

In 1985 and 2005, there were no results available. In 2008, 15% of respondents believed the Legal Ethics course should be taught in first year, 40% of respondents believed the course should be taught in upper years and 40% believed it should be taught in all years. Respondents gave reasons for preferring to teach the Legal Ethics course in various years. A recurring response was that issues of legal ethics and ethics also need to be taught pervasively throughout the three year curriculum. The instructor's reasons are listed below.

⁹ *Ibid.* This is almost a direct quote from p. 2-17 of the book, but it is not explained in further detail there.

¹⁰ *Ibid.*

Prefer First Year	Prefer Second Year	Prefer Third Year	Upper Years	Prefer All Years (Pervasive)
<ul style="list-style-type: none"> The first year course provides a foundation, but there need to be opportunities to return to these concepts in upper years, after students have been in clinical, pro bono and work related experiences. 	<ul style="list-style-type: none"> In second year, students know some law, but haven't already committed to a particular career path. 	<ul style="list-style-type: none"> In third year, issues are more urgent and gripping; students see the prospect of practice and students have more perspective. It is helpful if students have summered at a law firm and can bring back valuable insights. 	<ul style="list-style-type: none"> In the interest of balancing one's course load, students should be given a choice of section and year. 	<ul style="list-style-type: none"> The first year course provides a foundation, but there need to be opportunities to return to these concepts in upper years, after students have been in clinical, pro bono and work related experiences There should be a first year required introduction to the Codes and basics, as well as a third year elective which gives opportunity to reflect on one's personal approach to law practice and ethical situations
<ul style="list-style-type: none"> A first year Legal Ethics course is important to the teaching and practice of law and does not rely on prerequisites. 	<ul style="list-style-type: none"> In first or second year the students might be a little less cynical. 	<ul style="list-style-type: none"> Legal Ethics requires knowledge of other substantive courses 	<ul style="list-style-type: none"> Students have a sufficient context in upper years. 	<ul style="list-style-type: none"> Legal Ethics can be raised in all years (i.e. in property, constitution, civil process etc.) . Legal Ethics / ethics issues should be taught where they fall (i.e. conflicts of interest in corporate law courses).
<ul style="list-style-type: none"> Teaching Legal Ethics in first year sets the tone and questions for the rest of law school. First year, with a follow up course is upper year. 	<ul style="list-style-type: none"> In second year students are no longer struggling with basic concepts... They can imagine themselves as participants in issues raised in the class 	<ul style="list-style-type: none"> In third year students have the background and motivation to think about ethical issues. 		<ul style="list-style-type: none"> There should be an introductory class in first year, followed by courses in second and third year which are increasingly more detailed. Legal Ethics should be integrated into every substantive law class
<ul style="list-style-type: none"> Legal Ethics should be taught first year, in second term, because this sends the message that the subject is important. It also allows students to spot ethical issues in subsequent courses and take an advanced elective in ethics. 		<ul style="list-style-type: none"> In third year, students can draw on clinic or summer work for topic ideas and discussion. Where the experience is simply theoretical it is not as rich or deep. 		<ul style="list-style-type: none"> There should be introductory instruction in first year and a Legal Ethics course taught in second or third year. There should be an introductory course in first year as well as a third year elective. Legal Ethics should be a first year course with a follow-up course in upper years.
<ul style="list-style-type: none"> It would be great if Legal Ethics was in first year, but there is already so much that must be taught in first year it is just not possible. By third year students, because it is their last required course, seem to treat it as something they just need to get through to graduate. In first or second year the students might be a little less cynical. 				<ul style="list-style-type: none"> There should be a segment in first year and a specific course in second or third year. There needs to be a bit of understanding of the pervasive nature of lawyering ethics, but there is also a need to present the material in an analytically coherent way for the purposes of learning and critical analysis

H. COURSE CONTENT/EMPHASIS

In 1985, the main topics or areas of study in the courses were:

- Codes of Professional Conduct (33.1%)
- Ethics (20.3%)
- Nature and Structure of the Profession (19.0%)
- Legal Obligations of Lawyers (11.9%)¹¹

In 2005, the main topics or areas of study in the courses were:

- Codes of Professional Conduct (32.5%)
- Ethics (26.0%)
- Nature and Structure of the Profession (17.5%)
- Legal Obligations of Lawyers (18.3%)
- Other (Ie. research project) (10.0%)

In 2008, the survey question was redesigned to ask whether course content included interdisciplinary perspectives, critical perspectives and moral philosophy / ethics theory. This was done in response to scholarly debate about a perceived lack of such perspectives in both legal education and the Legal Ethics course specifically.¹² Examples of interdisciplinary and critical perspectives either reported by respondents or listed in their course syllabi include¹³:

- feminist and First Nations perspectives on legal education and the legal profession
- sociological and economics analysis
- transnational and pluralism addressing multiple normative frameworks for modern lawyers
- law and literature
- access to justice / pro bono / poverty law issues
- integration of personal identity with professional role morality (self-care, personal satisfaction, balance, stress management)

Examples of moral philosophy / ethics theory include:

- Kantian philosophy and moral development theories of Kohlberg, Gilligan and Rest
- ethics theories such as natural law and post-modernism

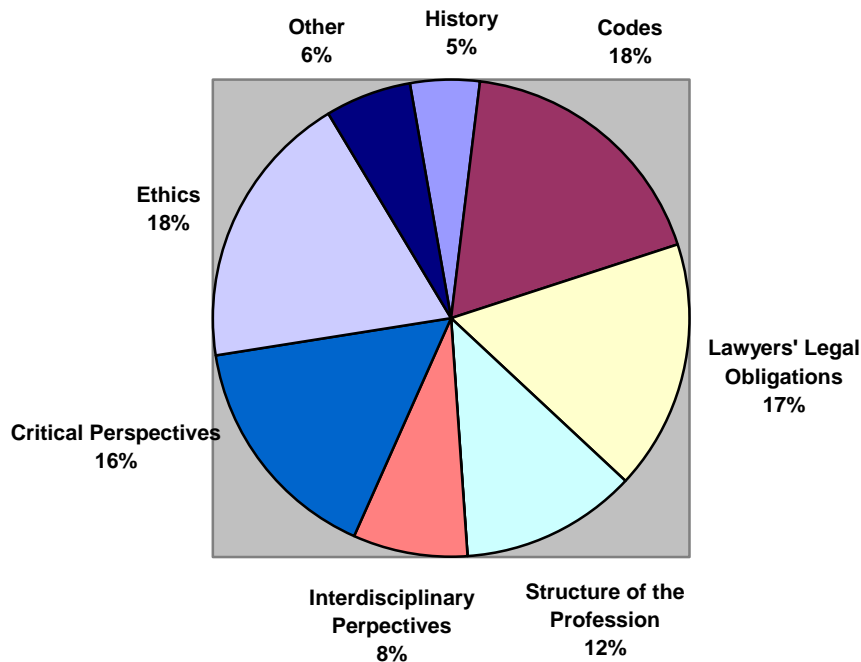
¹¹ *Ibid.* at 2-18.

¹² Henderson, Veronica, "Building on Strong Foundations: Rethinking Legal Education with a View to Improving Curricular Quality" (2006) 29 *Dalhousie L.J.* 491 at 14; Dodek, Adam M., "Canadian Legal Ethics: A Subject in Search of Scholarship" (2000) 50 *Univ. of Toronto L.J.* 115 at para 1-3; Rhode, Deborah L., "Professionalism in Professional Schools" (1999) 27 *Fla. St. U.L. Rev.* 193 at 2.

¹³ Chief Justice of Ontario's Advisory Committee on Professionalism, "Legal Ethics and Professionalism Teaching Materials Database", 2007.

The following pie chart shows, through amalgamation, the average amount of time spent on each topic area in the typical Legal Ethics course. It appears that interdisciplinary perspectives, critical perspectives and moral philosophy / ethics theory are now a reasonably significant component of Legal Ethics instruction.

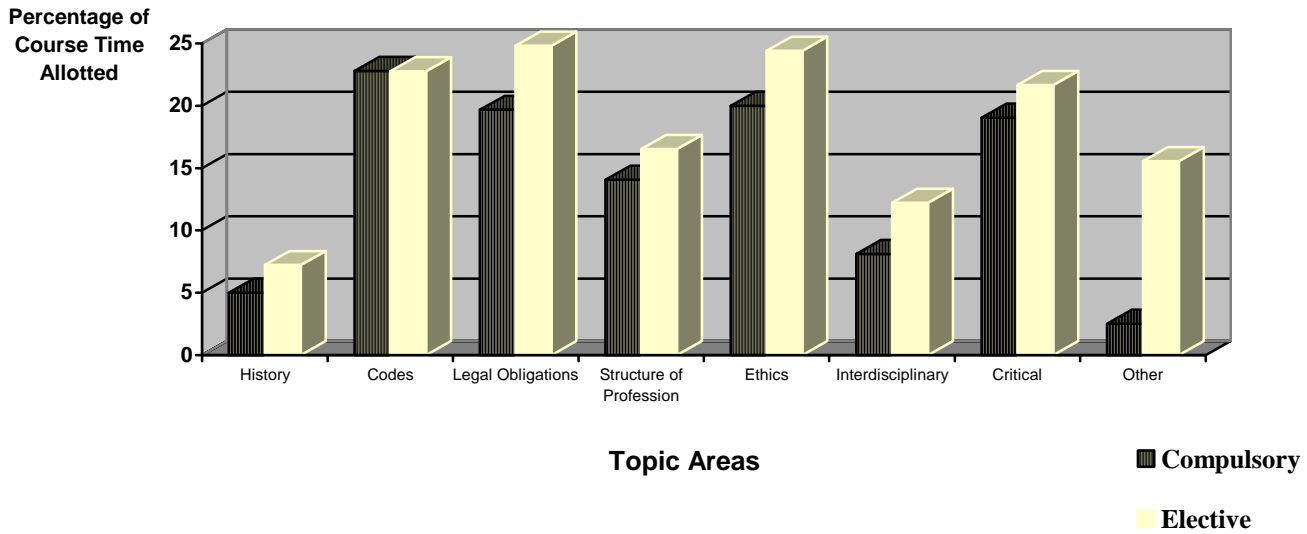
2008 Average Legal Ethics Course Content and Emphasis



2008 Compulsory vs. Elective Course Content and Emphasis:

Was there a significant difference in the amount of course time allotted to different topic areas in compulsory vs. elective Legal Ethics courses? **Dean Cotter, this next chart used to look quite different. Now that we have all 25 responses, the chart has changed. I'm uncertain as to what conclusions we can draw from it. Elective instructors reported more course time spent on each topic than compulsory course instructors. Is it an issue of overlap in the elective instructors' reporting? Do elective instructors manage to fit more in to their classes bc of smaller class sizes? Please let me know what conclusions you want to draw from this.**

2008 Compulsory vs. Elective Legal Ethics Class



I. TEACHING METHODS, MATERIALS AND EVALUATION

i) Teaching Methods

In 1985, teaching was done predominantly by:

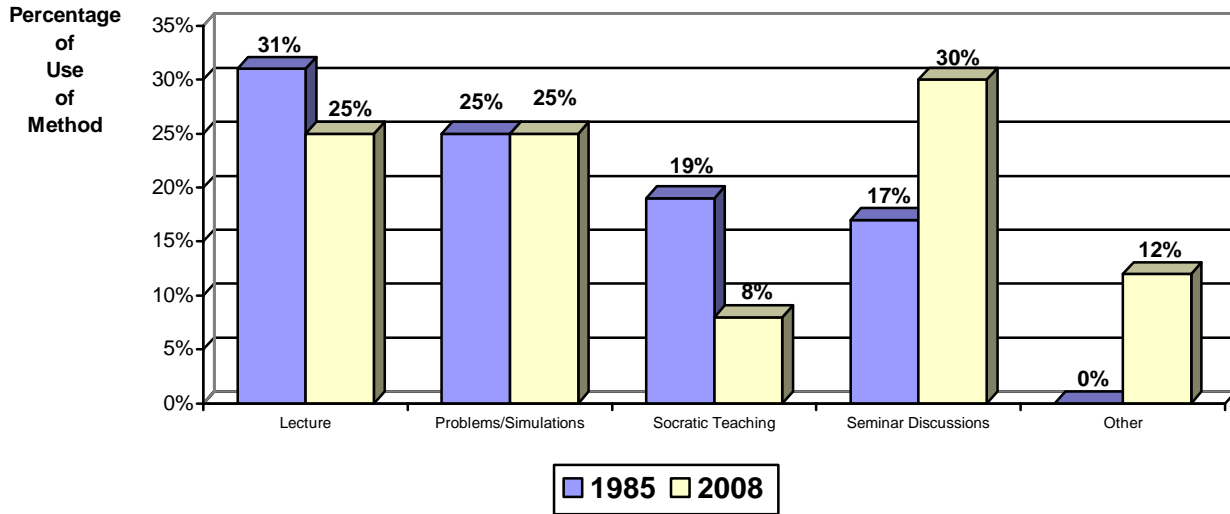
- lectures (31%)
- problems and simulations (25%)
- Socratic teaching (19%)
- seminar discussions (17%)

In 2005, this information was not available. In 2008, respondents indicated that the following teaching methods were used in Legal Ethics courses. (Some methods were used in combination, bringing the total over 100%).

- seminar discussions (30%)
- lectures (25%)
- problems/simulations (25%)
- Socratic Teaching (8%)
- Other (12%)
 - (small group work, discussions, presentations, guest speakers)

The chart below illustrates that since 1985, teaching methodology in Legal Ethics courses has changed significantly. The use of the Socratic method has declined from 19% in 1985 to 8% in 2008. The use of seminar discussions and other innovative teaching methods has significantly increased.

Teaching Methods 1985 vs. 2008

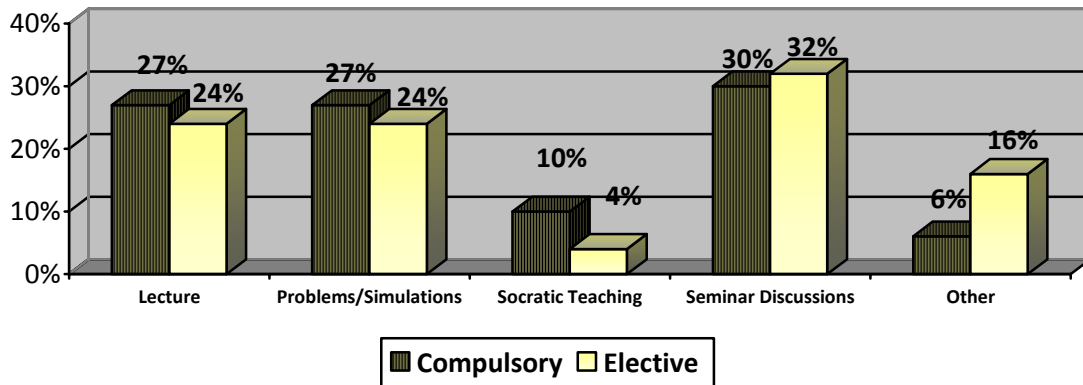


ii) Comparing Teaching Methods in Compulsory vs. Elective PR Courses in 2008

Elective

The 2008 information on teaching methods can be further subdivided between compulsory and elective courses. As shown in the chart below, compulsory courses have slightly higher rates of lectures and problems/simulations as well as moderately higher rates of Socratic teaching. Elective courses have slightly higher rates of seminar discussion and much higher rates of use of other teaching methods.

2008 Teaching Methods in Compulsory vs Elective PR Courses



iii) Teaching Materials

In 1985, the primary materials used were Codes of Professional Conduct and readings such as unpublished casebooks. Except for the occasional use of a casebook prepared by Arthurs, Millas & Starr, no one in Canada appeared to have developed a set of teaching materials for use other than at their own institutions.¹⁴ In 2005, this information was not available.

In 2008, respondents indicated that the following teaching materials were used in the teaching of Legal Ethics courses. (Materials were used in combination bring the total over 100%).

- 36% of respondents used a Legal Ethics textbook
Of this, 3 used Mackenzie, 4 used Hutchinson, 2 used Graham and 4 plan to use the new casebook “*Lawyers’ Ethics and Professional Regulation*” by Woolley et al.¹⁵
- 40% of respondents used an in-house casebook
- 60% used assigned readings
- 68% used Codes of Professional Conduct

iv) Shift to Participatory Modes of Evaluation

In 1985 and 2005, 100% of courses were graded; none were evaluated on a pass/fail basis. In 2008, 95% of courses were graded, with only one course evaluated on a pass/fail basis.

In 1985, evaluation of students was commonly done by examination (all or part of the evaluation in all but two courses in 1985). Other evaluation techniques have been used: classroom discussion, leading seminars, the preparation of student papers, the recording of a journal. The breakdown of the other evaluation methods was not available.

In 2005, the following methods of evaluation were used. (Some methods were used in combination, bringing the total to more than 100%).

- | | |
|------------------|-----|
| ▪ Student papers | 75% |
| ▪ Exams | 50% |
| ▪ Participation | 6% |
| ▪ Assignment | 6% |

In 2008, the following methods of evaluation were used. (Some methods were used in combination, bringing the total to more than 100%).

- | | |
|------------------|-----|
| ▪ Student papers | 83% |
| ▪ Participation | 67% |
| ▪ Exams | 42% |

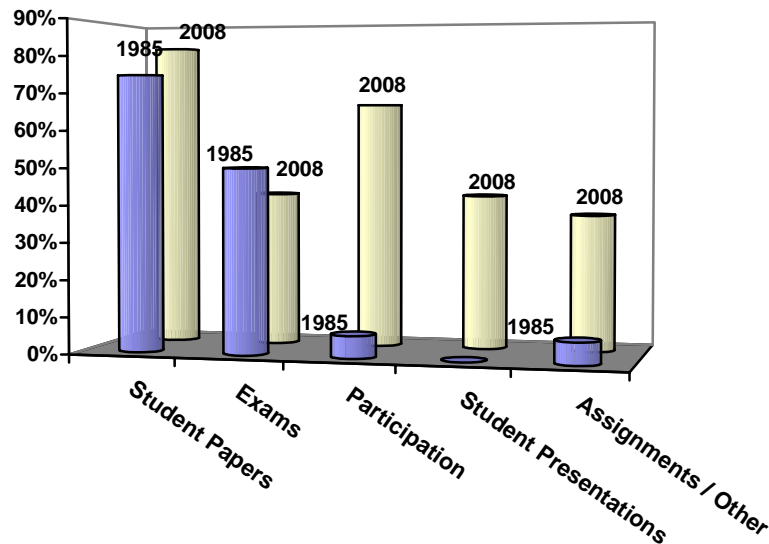
¹⁴ Cotter, *supra* note 1 at 2-19

¹⁵ Woolley, Devlin, Cotter and Law, ed., *Lawyers’ Ethics and Professional Regulation* (Toronto: LexisNexis, 2008).

- Student presentations 42%
 - Other 37%
- (choice of combination of above, memos, reflections papers, in-class tests, written problem-solving assignments, journals)

The chart below highlights a significant increase in class participation, student presentations and assignments as methods of evaluation.. The increase in class participation, student presentations and assignments as methods of evaluation may be accounted for in part by respondents' views that active and participatory learning models are the most effective methods for students to critically analyze concepts within the course.

Methods of Evaluation Used in Legal Ethics Classes



J. THE TEACHERS

i) Seniority of Legal Ethics Course Instructors:

In 1985, instructors of Legal Ethics courses were comprised of:

- Full-time law teachers (70%)
- Practicing lawyers/ Judges (30%)

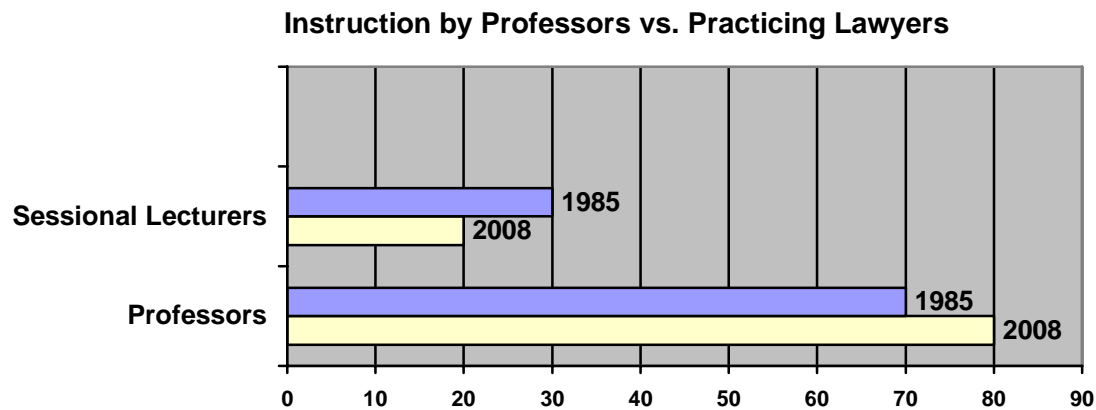
In 2005, instructors were comprised of:

- Full-time law teachers (65%)
- Practicing lawyers (35%)

In 2008, instructors were comprised of:

- Full-time law teachers (80%)
- Practicing lawyers (20%)

This shows an increase in the number of professors teaching Legal Ethics courses compared to the number of sessional lecturers from the practicing bar.



ii) Number of Years Instructors Have Taught the Course

In 1985, the experience of the teachers fairly evenly spanned the spectrum, from the first year of teaching the course to experience in excess of a decade. In 2005, 58% of instructors had been teaching the course for 5 years or less. 42% of instructors had been teaching the course for 6 – 11 years or more. These results were identical for 2008, where 58% of instructors had been teaching the course for 5 years or less, and 42% of instructors had been teaching the course for 6 – 11 years or more.

iii) Instructors' Primary Area of Scholarship

Historically, scholarship in the field of Legal Ethics was underdeveloped, particularly in Canada.¹⁶ In 1985 Esau's noted that a factor critical to the encouragement of scholarship in the field was the issue of whether those teaching the subject saw it as their primary area of study and scholarship.¹⁷ Accordingly, a question was included in the 2008 survey aimed at determining whether or not instructors considered Legal Ethics to be their primary field of study.¹⁸ In 1985, with only a few exceptions, the instructors

¹⁶ Esau, Alvin A. J., *Teaching Professional Ethics and Responsibility at Law School: What, How, and Why?*, Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985 at 339-340 (Federation of Law Societies, 1987); Dodek, Adam M., "Canadian Legal Ethics: A Subject in Search of Scholarship" (2000) 50 Univ. of Toronto L.J. 115 at para 1-3; Cramton, Roger C. & Koniak, Susan P., "W.M. Keck Foundation Forum on the Teaching of Legal Ethics: Rule, Story, and Commitment in the Teaching of Legal Ethics" (1996) 38 Wm and Mary L. Rev. 145 at para 163; James R., "Lawyer Ethics: A Pedagogical Mosaic" (2000) 14 ND J.L. Ethics & Pub Pol'y 117 at footnote n24; Pearce, Russell G., "Teaching Ethics Seriously: Legal Ethics as the Most Important Subject in Law School" (1998) 29 Loy. U. Chi. L.J. 719.

¹⁷ *Ibid.*

¹⁸ Esau, Alvin A. J., *Teaching Professional Ethics and Responsibility at Law School: What, How, and Why?*, Legal Education in Canada: Reports and Background Papers of a National Conference on Legal Education held in Winnipeg, Manitoba, October 23-26, 1985 at 339-340 (Federation of Law Societies, 1987).

had published no scholarship in the area of Legal Ethics.¹⁹ In 2008, 5 out of 21 respondents, or 24%, indicated that Legal Ethics was their primary area of scholarship. While encouraging, this is not an overwhelming response, and suggests that the field is still not fully ‘embedded’ into the legal academy as a legitimate area of academic study and research

iv) Instructors’ Training and Experience

In 1985 and 2005, no information was compiled on the training and experience of instructors of Legal Ethics courses in Canada. In 2008, instructors were asked whether they had formal training or experience in “ethics or moral philosophy” and formal training or experience in “the practice of law”. Over all, 96% of instructors indicated they had training/experience in the practice of law; 44% of respondents had training/experience in ethics or moral philosophy.

There was a slightly higher reporting of experience in the practice of law among instructors of compulsory courses (100%) compared to instructors of elective courses (88%). There was a slightly higher rate of ethics training among instructors of elective Legal Ethics courses (50%) compared to instructors of compulsory courses (40%).

v) Teacher Satisfaction

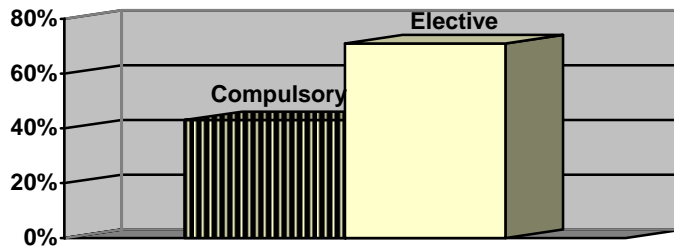
Instructors were asked whether their experience in teaching of the Legal Ethics was as more, less or equally satisfying compared to other, substantive, law courses. In 1985, 50% of the full-time law teachers found the teaching of the Legal Ethics course to be more satisfying than the teaching of other courses. Another 35% found it to be at least as satisfying as other courses. In 2005, 4 out of 8 respondents found, or 50%, found the teaching of Legal Ethics courses to be more satisfying than the teaching of other courses.

In 2008, 11 out of 21 respondents, or 52%, found the teaching of the Legal Ethics course to be more satisfying than other (substantive) courses. Another 24% found it to be equally satisfying.

The 2008 survey compared teacher satisfaction between instructors of compulsory Legal Ethics courses vs. elective Legal Ethics courses. A higher rate of instructors of elective courses (71%) found the course to be more satisfying to teach, compared to 43% of instructors of compulsory courses. This is not surprising, and is a generally encouraging result, given the evolution to compulsory courses, sometimes thought of as less fulfilling ‘duty courses’ within the law school curriculum

¹⁹ *Cotter, supra* note 1 at 2-19.

2008 Instructors Who Found the Legal Ethics Course to be More Satisfying



Reasons for satisfaction include:

- course is personally and professionally challenging and rewarding
- course is taken seriously by students
- professor and students love it
- integrates theory and practice
- course lingers for students
- course aids students' transition to practice
- course aids students in integrating personal ethics and lawyerly identity
- great discussions
- sense of immediacy
- fabulous issues
- central to importance of law

Reasons for dissatisfaction include:

- students are not interested
- students say it is not as important as substantive courses
- more difficult than doctrinal courses
- course is too broad, is a survey course
- students are resistant because the course is compulsory, third year course, they don't think it's realistic for the real world, they mistake the class for trying to make them better people
- amorphous content – constant search for more relevant or interesting content
- needs smaller groups to be less intimidating for students to pursue ethics

vi) **Future Intentions Regarding Legal Ethics Teaching**

In 2008, 91% of respondents indicated that they will continue to teach this area in future years.

vii) **2008 Instructors' Views on Advantages and Disadvantages of The Course Content of Their Courses, Presently**

Advantages	Disadvantages
Instructor can speak with authority about real life issues because has practiced ten years	Content doesn't give much help with practical issues like conflicts of interest
Balance of micro and macro level dimensions of ethics	Need more discussion and more grappling with set problems in a safer environment
Covers personal ethics	Bridge week needs more co-ordination with Legal Profession course
Functions well as a seminar	Student belief that Legal Ethics can't be grasped in a classroom
Addresses necessary topics of lawyering and social responsibility	Too broad ranging
Provides opportunity to think about one's role in the profession, the culture of the profession	One instructor believed the book used in their class is somewhat narrow
Provides a forum for discussing morality in one's future career	One instructor is dissatisfied with their choice of textbooks and will change this.
Broad-ranging, broad coverage	The creating and writing of problems or situations used for simulations is time-consuming and difficult.
One instructor has improved their course content so as to emphasize ethical reasoning more than focusing on codes of conduct	One instructor believed that having the course only in the context of conflict resolution at their school doesn't allow students to consider ethics in a litigation context.
A well-received topic was how law practice, management of firms and the trajectory of a professional life is bound to change over the next generation	Content may be a bit pedestrian.
Reliance on Code and textbook can be both + and -.	Content can be useful when related to legal education, its expectations and method of learning law.
Students develop their own ethical framework. Students become familiar with Codes in both a prescriptive and critical way.	

viii) 2008 Instructors' Views on Teaching Methodology

Advantages	Disadvantages
Lots of variety of techniques	Variety of techniques makes it difficult to administer the course
Cheap and easy to mount each year	Methodology not standardized at the school
Multiple learning environments	Lack of agreement between sections
Many sections offered each year	Too much variety between sections
Variety	Needs work-shopping
Small classes	Need course taught in small groups to allow for more engagement, involvement, role-playing, simulations, discussions
Small enrollment	Reduced teaching time means fewer simulations possible
Small groups provide an ideal context	Lacks critical/ interdisciplinary perspective
Ethical problem analysis	Guest speakers from practicing bar often prove highly disappointing
Reflection, students can bring what they care about the what they're learning	Reliance on sessional teachers who rely on war stories, practice pointers, when need to explore deeper questions
Explore issues in depth	Some instructors lecture only, which isn't the best method
Intensive reading and discussion	Two-credit weight of course impedes motivation
Student centered	No particular institutional interest other than it is nice someone is doing it
The course is compulsory so at least everyone gets enough exposure to work on the issues when they should arise	There is limited formal evaluation
The course is presented the first week of the first term in first year, giving students an early introduction to the topic	Instructor's own lack of formal training in the subject.
Students develop their own ethical framework and then apply it throughout the course in various activities	
Web-based materials allow students to work at their own pace	
Students are motivated, willing to experiment, and give honest opinions. Students also express the view that the course should be required.	

K. INSTRUCTORS' PERCEPTIONS OF STUDENT PERSPECTIVES

In 1985, instructors' perceptions of students' views regarding courses in Legal Ethics illustrated three dichotomies: 1) the practicality/philosophy dichotomy 2) the optional / compulsory dichotomy and 3) the first-year/third year dichotomy. The first dichotomy is between students who want a "practical" course and those who want a course dealing with the philosophy of the legal profession, professional roles and the like. The second dichotomy is between the self-selecting nature of an optional course that has much to do with student opinions about the course. In the third dichotomy, the course and issues raised in it are most commonly received with interest and enthusiasm by first-year students, and received with noticeably less interest or enthusiasm by third-year students. At a number of schools, the Legal Ethics course appeared to have been marginalized by students, possibly by the institution and possibly by the choices of teaching materials and teaching techniques.²⁰

In 2008, instructors rated students' perceptions of the Legal Ethics course based on four descriptions of the course: the degree to which students saw the course as i) academically challenging, ii) interesting/stimulating, iii) a painful necessity, and iv) useful for law practice. These responses are the professor's observations regarding students' perceptions of the course.

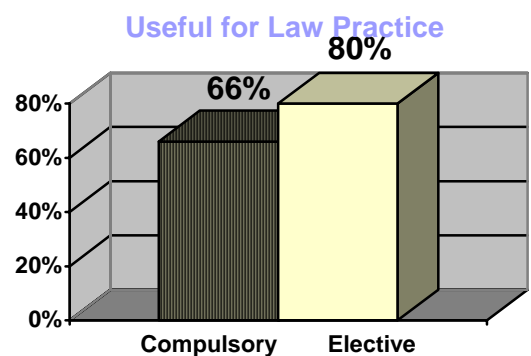
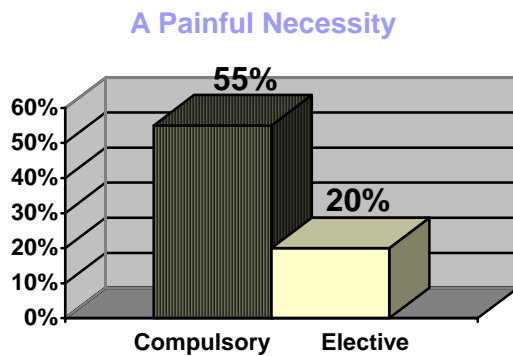
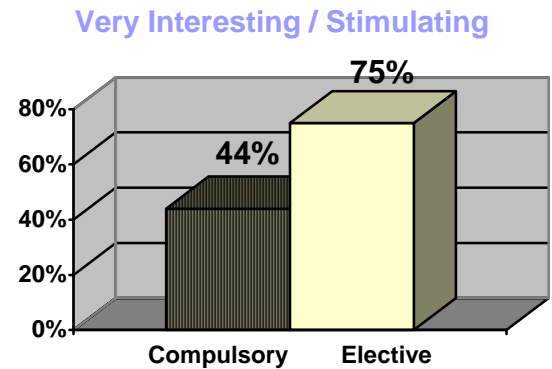
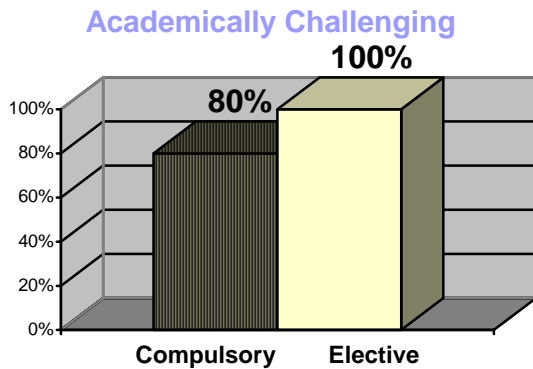
Some encouraging initial observations can be made. None of the respondents rated the course uninteresting or not stimulating. In addition, all respondents rated the course either moderately or very useful for law practice.

As well, regardless of whether the course was a compulsory or elective course, there was no measurable difference in the sense of student perceptions with respect to the course being "academically challenging". The majority of respondents (70-80%) indicated the Legal Ethics course was viewed by students as moderately academically challenging. Some differences in student perceptions did arise with respect to the courses being rated "interesting and stimulating" and "a painful necessity". Slightly higher numbers of respondents who taught elective Legal Ethics courses (75%) indicated that students viewed the course as very interesting and stimulating. By comparison, only 44% of respondents from compulsory Legal Ethics courses thought that students regarded the course as very interesting and stimulating.

While a high percentage of respondents thought that their students viewed the course as useful for law practice regardless of whether it was a compulsory or elective course, there were divisions in perceptions of students in compulsory courses compared to elective courses on all four questions. A higher percentage of respondents teaching elective courses thought that their students – those who self-selected the Legal Ethics course – found it useful, interesting/stimulating and academically challenging, and a smaller percentage thought their students saw the course as a painful necessity. Again, these are not surprising result, and in some respects encouraging, given the generally favourable perceptions of nearly all the respondents that the Legal Ethics course is seen to be

²⁰ *Cotter, supra* note 1 at 2–20 and 2–21.

academically challenging and professionally useful, even for students who are required to take it.



L. “Pervasive” Legal Ethics Instruction

In 2008, 7 out of 24 respondents, or 29% indicated there was a faculty mandate or directive at their school that issues of Legal Ethics be dealt with pervasively. Of that, 2 said the mandate had been successful, 5 said it had not been successful.

Among the schools that indicated there was a faculty mandate, several reasons were given for the success or failure of the mandate. Reasons it was successful include a strategic plan calling for issues of Legal Ethics to be dealt with pervasively and a full faculty review of first year curriculum. One instructor described themselves as pushing for a pervasive mandate and described colleagues as receptive. One respondent noted that newer faculty would be highly supportive if their institution pursued a pervasive mandate.

Reasons the mandate was not successful include institutional emphasis on successful regurgitation of substantive legal principles, little or no attention to real life ethical dilemmas facing practitioners, various approaches and abilities of instructors in a compulsory Legal Ethics course over the years which led students to consider the course

a joke, faculty resistance to perceived interference with their courses, faculty disinterest and no coordination.

These issues are critical to legal education, since effective pervasive instruction across a law school curriculum requires an institutional directive, institutional commitment, professorial buy-in and regular monitoring and assessment. To date, it appears that these factors have not come together in a consistent enough way to ensure that pervasive instruction in Legal Ethics at Canadian law schools has been particularly successful.

III CONCLUSION

These are challenging and exciting times for both the legal profession and the academy as we jointly address the educational requirements for ‘Lifelong Learning in Professionalism’ to be successful. A dimension of this work requires a sound learning foundation, something that University-based law schools in this country have undertaken for at least the last 50 years, And it is fair to describe Canadian common law schools as having not, until recently, begun to embrace this aspect of legal education in the academy. The signs of change are present. Recent law school initiatives – by legal education’s typically glacial pace of change – to take instruction in Legal Ethics seriously are very encouraging. And it appears that this change is occurring in ways that will strengthen the academy at the same time that it meets two critical and legitimate expectations of the legal profession – education in relation to lawyering and the legal profession, and the building of a foundation of legal knowledge and ethical perspective upon which the legal profession can and must build.

The information provided by those teaching Legal Ethics in Canadian common law schools suggests the following patterns that address the wide range of needs of all constituents:

- Legal Ethics instruction is expanding throughout law school curricula in ways that now give us greater, though not complete, confidence that large numbers of law students are exposed in a systematic way to the principles and themes of Legal Ethics.
- The content of Legal Ethics courses appears to be responsive to the academic expectation that the subject of Legal Ethics be treated as a serious course, with meaningful content and analytical frameworks, and viewed, at least in part, through a critical lens. This is the very work we ask of the legal academy.
- The course is being taught more and more by full time members of the legal academy, more of whom are making the area a subject of their own research and scholarship, a development much to be welcomed in Canada.
- Courses in Legal Ethics may not be the burden they once were thought to be. Far from being the ‘dog of the curriculum’, Legal Ethics courses may be resonating better with students, as they are with instructors, far better than the academy or the profession previously believed.

- Law schools are making progress in the area of Legal Ethics instruction and we are closer to being able to say that a solid foundation exists upon which the legal profession can build further and more sophisticated learning programs.
- The academy can meet these expectations without compromising its commitment to rigorous intellectual standards.

In my view, these encouraging themes justify and give confidence that the legal academy and the profession are able to be jointly and respectfully engaged in a meaningful project – a grand legal education project that can enrich the academy and the legal profession together.

Finally, for those directly engaged in the project it can be a richly fulfilling endeavour at the personal individual level. In 1985, after anguishing about whether his teaching made a any difference at all, Alvin Esau concluded his observations about the teaching of Legal Ethics with this thought:

Perhaps [Legal Ethics teaching] does matter profoundly, but it is not the life of power and glory or fame and fortune, but the way of humble digging for the treasure that speaks to the emergence of a more competent and responsible profession in the service of human justice needs.²¹

²¹ Esau, *supra* note 1.