

PROFESSIONALISM IN INTERNATIONAL CONTEXTS

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GOALS FOR TODAY

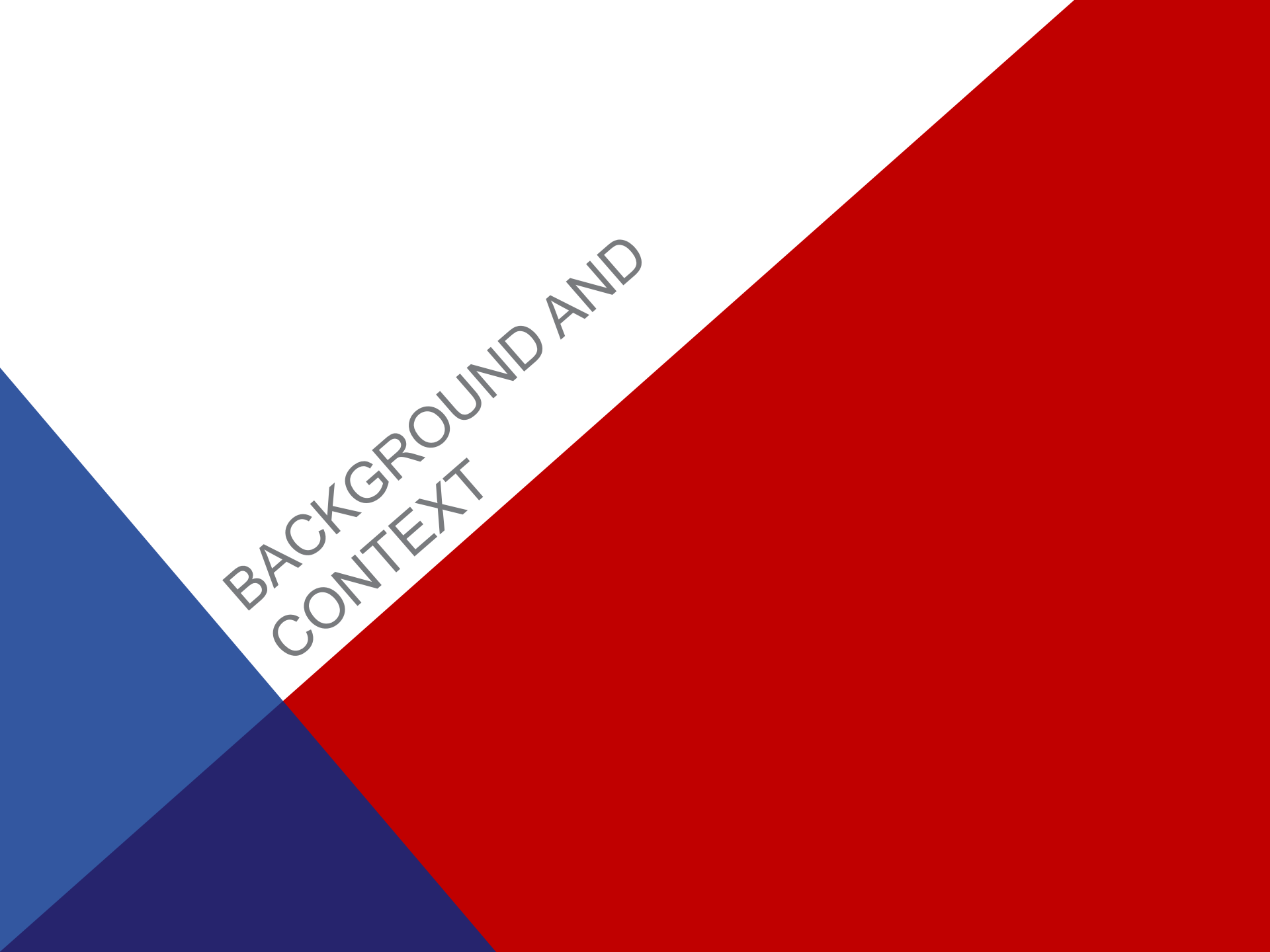
Develop professional identity as a lawyer who may work internationally, engage in unconventional practice

“Doing good”, “lawless” environment ≠ no professional obligations

Even when doing “non-legal” work, may be held to a higher, different standard because you are a lawyer (e.g. journalist, businessperson)

LSUC Rules do not cover all scenarios, must develop understanding of certain universal professional/ethical guidelines






BACKGROUND AND
CONTEXT

MY BACKGROUND AND EXPERIENCE

Called to the Bar in Ontario (2002), practicing lawyer (full fees and insurance)

- Articled at a large, full service law firm
- NGOs in USA and Canada
- Criminal defence counsel

As Director of IHRP:

- Some conventional practice
 - Counsel before international quasi-judicial mechanisms
 - Advocacy work for NGO clients
 - Legal information / Academic research
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WORKING OUTSIDE ONTARIO

What ethical rules apply?

- ethical/professional rules of the jurisdiction in which you are practicing
- rules of the tribunal before which you are appearing
- relevant criminal and administrative laws
- International Bar Association Principles
- Other professional codes if you are working in a quasi-legal or non-legal capacity


***You may be subject to more than one code at any time!**



SELF-REFLECTION

Lawyers may operate in a grey zone where their roles, duties, responsibilities, are unclear.

Self-reflection can assist in determining appropriate ethical conduct:

- What is my role? Am I applying specialized legal knowledge to a set of facts? If so, what rules apply? If not, do other rules apply?
 - Do I have a client – an individual or organization? If not, to whom am I accountable – legally, morally, professionally?
 - What are the stakes if I fail? How serious are the consequences for me, my employer, client, “the cause”?
 - Who can I ask for guidance if I don’t know what to do?
- 



BEYOND THE LAW
SOCIETY OF UPPER
CANADA RULES

INTERNATIONAL GUIDELINES

International Principles on the Conduct of the Legal Profession (2011)

- **International Bar Association**
 - Largest professional association of lawyers and law societies
 - Members: Federation of Law Societies of Canada
 - Co-chair of IBA Professional Ethics Committee: Victoria Rees (Canada)

- **Key Principles:**

Independence

Honesty, integrity and fairness

Conflicts of interest

Confidentiality

Client's interest

Lawyer's undertaking

Client's freedom

Property of clients and third parties

Competence

Fees

PROPOSED CORE ETHICAL TENANTS

Core ethical tenants to guide work, regardless of your official role, jurisdiction etc.

Rachel Barish, *Professional Responsibility for International Human Rights Lawyers: A Proposed Paradigm* (2007))

Some of these are drawn from the law, but some are found in other fields that may be more closely aligned to non-conventional legal work:

Competence

Communication

Independence

“Do no harm” / mitigate risk

Informed consent

Accuracy

Cultural sensitivity

Objectivity / Avoid conflicts

Accountability



COMPETENCE

LSUC Rule 3.1 - “competent lawyer” means a lawyer who has and applies relevant knowledge, skills and attributes in a manner appropriate to each matter undertaken on behalf of a client...”

IBA Principle # 9 – “A lawyer’s work should be carried out in a competent and timely manner. A lawyer shall not take on work that the lawyer does not reasonably believe can be carried out in that manner.”

For international lawyers, “extra competence” may be needed:

- international law; law of jurisdiction or court
- political context and associated risks
- cultural competency
- working with vulnerable groups



COMPETENCE INCLUDES EFFECTIVE COMMUNICATION

LSUC Rule 3.1: competence includes: “communicating at all relevant stages of a matter in a timely and effective manner

Again, there are additional factors to consider in non-conventional practice:

- Communication with clients, research/project partners, witnesses
- Appropriate communication for laypersons
- Appreciating nature of informed consent, transparency, accountability



INDEPENDENCE / CONFLICTS OF INTEREST / BIAS

LSUC Rule 3.4: Lawyer cannot act for client where there is a conflict of interest

“substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person”

IBA Principle 3: “A lawyers shall not assume a position in which a client’s interests conflict with those of a lawyer...or another client.”

In the human rights context, independence may require:

- Lack of bias, and objectivity (vs. zealous advocate?)
- Independence from political or external pressures
- Transparency (who are your funders?)



ETHICAL OBLIGATIONS FROM OTHER PROFESSIONS

Public Health

- Do no harm principle – this includes learning what is harmful!

Research Ethics

- Free, prior, informed consent
- Mitigation of foreseeable risks to participants
- Special care to marginal, vulnerable participants

Journalism - Accuracy and objectivity

NGOs

- Accountability – transparency regarding funding sources



SPECIALIZED CODES

For humanitarian workers: International Committee of the Red Cross, *Code of Conduct for NGOs in Disaster Relief*

For human rights investigators: International Bar Association, *Guidelines on International Human Rights Fact-Finding Visits and Reports* (2009) (“Lund-London Guidelines”)

“Fact-finding” = mission or visit mandated by an NGO to ascertain the relevant facts relating to and elucidating a situation of human rights concern, whether allegedly committed by state or non-state actors. In many instances this activity will result in a report.



LUND-LONDON GUIDELINES RE FACT-FINDING

Various sections related to best practices in fact-finding investigation and human rights reporting:

- Clearly limited terms of reference
- Composition of delegation (bias, competence, experience, expertise, gender)
- Use of interpreters (their independence, lack of bias, cultural competence)
- Interviews
 - Safety and security of interviewees (location, timing, stress/trauma etc.)
 - Free, prior, informed consent
 - Appropriate conduct with vulnerable witnesses
- Report-drafting, translation etc.
- Follow up: continual monitoring of safety of interviewees



CASE STUDY:
HUMAN RIGHTS FACT-
FINDING

Your employer, a small human rights organization based in the United States, believes that military forces in Country A are conducting an ethnic cleansing campaign. Hundreds of thousands of individuals have fled Country A across the border to Country B. These individuals are now in makeshift refugee camps that are slowly being established by humanitarian organizations, but the government of Country B has refused to provide any assistance to the relief effort (and has sometimes hampered provision of aid) because it does not want to accept the refugees.

You have been deployed to Country B to investigate the situation and draft a public report that will consider potential violations of international law.

Scenario prepared by the Molly Beutz for the Lowenstein International Human Rights Clinic, Yale Law School



QUESTION 1: YOUR PROFESSIONAL RESPONSIBILITIES?

What are the sources of your professional responsibilities?

To whom are you accountable?

Does it matter that you are a lawyer?



QUESTION 2: INTERVIEWS

After you arrive in Country B, you travel to one of the makeshift camps to interview refugees. You speak with a representative of the camp who suggest that you speak with a particular individual. Working with an interpreter, you find the individual and sit down to start the interview. You have difficulty dispersing crowds, who keep returning even when you ask them to leave. Though you have great confidence in your interpreter, the interviewee speaks a local language that is difficult for your interpreter to understand. You explain who you are and ask him about his experiences. As he tells you his experiences, he tells you about his brother who is being jailed by Country A and is being tortured. He asks you if you can write a letter to the US government about his brother.

There are clear problems with the conduct of this interview. How might you have addressed or mitigated those problems?

Do you write the letter regarding his brother?



QUESTION 3: INTERVIEWS CONT.

In the course of your interviews at the refugee camp, you hear about a local activist who has been instrumental in raising awareness about the conditions in the refugee camps. You contact him and arrange for an interview. In the interview, he tells you that he is also a field worker and was forced to take a day off to meet you, and lost the equivalent \$4 in wages.

Do you offer to reimburse him for lost wages?



QUESTION 4: MEDIA

A reporter from the BBC contacts you because she would like to do a story on the conditions in the camps. She asks you what you have learned.

Do you do the interview? If so, what do you say? If not, why not?



QUESTION 5: ERRORS

You return home and draft your report. The report is released and you are contacted to do a number of press appearances. An academic expert contacts you and advises that a key static upon which you rely is incorrect – you verify and he is right.

What do you do?

