

ETHICAL LAWYERING IN A GLOBAL COMMUNITY

COURSE OUTLINE

TERM:	Fall 2007-Winter 2008
DATES:	Part I: 4-7 September 2007 Part II: 7-18 January 2008
PROFESSORS:	Adam Dodek Trevor Farrow (Course Director) Janet Mosher Robert Wai
GRADUATE TEACHING ASSISTANTS:	Rusby Chaparro Graham Hudson Stuart O'Connell Mary Stokes

INTRODUCTION

This course integrates an introduction to legal ethics and professionalism with an introduction to the multicultural and international, comparative and transnational (ICT) dimensions of contemporary Canadian law and lawyering. The course is delivered in two segments.

Part I of the course, including 9 contact hours, is taught over four days in the first week of the fall term. It introduces students to:

- multiple visions of lawyering in multicultural and global contexts;
- the legal profession and professionalism;
- foundational issues including access to justice and the public interest; and
- a number of the ethical, professional and practical issues that students may encounter in the Osgoode Public Interest Requirement (OPIR) program.

Part II of the course, including 30 contact hours taught in an intensive session in the first two weeks of the winter term and building on the themes developed in Part I, is designed to:

- introduce students to basic ethical concepts and moral theories; and

- examine, primarily using a case-study approach, some of the ethical and professional challenges posed by the cross-cultural and ICT character of Canadian legal practice.

BACKGROUND

The changing nature of legal practice has resulted in the proliferation of practice contexts and roles for lawyers. This course introduces students to multiple visions of lawyering and professional roles and the many contexts in which those roles are performed. It asks whether and how context should matter in terms of how lawyers conceptualize their roles and their individual and collective professional and ethical obligations. It explores questions of how legal professionals working in different settings such as private practice, government, legal aid clinics, the legal academy, or beyond the formal practice of law, should conceptualize their roles, opportunities and obligations. It explores different *lawyering visions*; that is, visions of *how* one undertakes the task of lawyering: for instance, lawyer as collaborator, lawyer as deal-maker, lawyer as expert, lawyer as facilitator, lawyer as negotiator, lawyer as translator/storyteller, lawyer as friend and lawyer as hired gun. It questions the centrality of adversarialism and neutral partisanship (the “hired gun” vision) in depictions of lawyers’ roles. It emphasizes the importance of a self-conscious selection of lawyering vision. In the process, it draws students’ attention to the power dynamics in lawyer-client relationships, to the scope of conversations lawyers ought to have with clients, and to possible individual or collective duties beyond those owed to clients. In so doing, the course will put the concept of the public interest front and centre and ask students to engage in a critical and self-reflective conversation about what the public interest is and what it means in terms of lawyering, the profession and professionalism. Central to all of these discussions will be the underlying theme of access to justice.

Further, the communities served by lawyers, the practice contexts in which they work and the problems they encounter are increasingly diverse, complex, transnational and global in character, demanding new competencies and raising a host of new issues about ethics and professionalism. More and more lawyers engage in transnational practices, including, for example, corporate, family, labour and human rights practices. Knowledge of other legal systems and the norms of professional conduct in other jurisdictions is increasingly essential in such settings. Even beyond these self-consciously transnational contexts, few if any fields remain in which legal professionals can rely solely on knowledge of a single, domestic legal system. Local communities are microcosms of global diversity in which a multiplicity of official and unofficial legal orders and ethical systems overlap. The global nature of local communities means that the vast majority of lawyers will be required to work in contexts that require cross-cultural competencies and sensitivities to diverse moral perspectives. Indeed, competent legal representation necessitates attention to the cross-cultural and ICT dimensions of much legal work.

LEARNING OBJECTIVES

The overall objective of this course is to encourage students to engage in an expansive, moral conversation about lawyering that will lead to a reflective and critical approach to ethical lawyering in a global community.

By the end of the course, students should be able to:

- appreciate the breadth and diversity of visions of lawyering;
- articulate their own preliminary lawyering vision (at least tentatively);
- demonstrate the ability to think critically about the legal profession and professionalism in society and in their own lives;
- think critically and imaginatively about individual and collective professional issues such as access to justice and the public interest;
- demonstrate a basic understanding of several major strands of moral theory;
- discern ethical frameworks that are appropriate to various lawyering roles and practice contexts;
- engage in ethical deliberations about legal problems in manners that are open to multiple viewpoints, moral perspectives and legal orders;
- demonstrate an understanding of basic ICT concepts;
- appreciate the diverse practices of lawyers and the multicultural and ICT norms and contexts that shape those practices;
- analyze, discuss and write about ethics, professionalism and ICT issues in ways that integrate skills and themes introduced in other law school courses and in pre-law school education and experiences; and
- develop a context for some of the ethical, professional and practical issues that students may encounter in the OPIR program.

It is important to emphasize that the course does not attempt to provide a comprehensive treatment of either legal ethics/professionalism or the ICT dimensions of contemporary Canadian law. Rather, it seeks to expose students in relevant and meaningful ways to both areas from the very start of their legal education and lay the foundations for consideration of these issues in the rest of the LL.B. educational program and beyond.

MATERIALS

The course materials will be primarily provided in two materials packages, one for each of Part I and Part II. Materials for Part I will be available prior to the start of the fall term. Materials for Part II will be available prior to the start of the winter term. Further materials may be provided from time to time for individual sessions and by individual instructors.

The course website – available through Trevor Farrow’s faculty course webpage¹ – contains various notices and materials and will be updated from time to time.

EVALUATION

Final course grades will be assigned following Part II of the course. Evaluation for the course is based on the following 4 components.

- A personal reflective essay, to be discussed further in class, addressing the following question:

Articulate what vision of lawyering you have for yourself and reflect on the sources of that vision (e.g. popular culture, literature, family members, friends, community members, life experiences, etc.).

This essay, due after the end of Part I, should be handed in at the Osgoode Student Services office by 3:00 pm on 11 September 2007. Students’ numbers and the name of their professor should be clearly marked on the front page of the essay. It is limited to 3 double-spaced, type-written, 12 point font pages. It is based on the course materials, discussions and students’ own observations and experiences and should therefore include no outside research. Students are strongly encouraged to be self-reflective and to take risks in terms of their thinking, ideas and reflections in this essay. Value: 10% (10% if the essay is completed, 5% if it is barely completed, and 0% if it is not completed).

- A two-page critical analysis (to be discussed further during Part II) of a specific case, question or reading discussed during the first week of Part II. This exercise is due during the second week of Part II at the Osgoode Student Services office by 3:00 pm on 15 January 2008. Students’ numbers and the name of their professor should be clearly marked on the front page of the exercise. A possible model answer or approach to this exercise will likely be discussed in class during the second week of Part II. Value: 10 % (graded).

¹ Online:

http://osgoode.yorku.ca/QuickPlace/trevorfarrow/Main.nsf/h_Toc/4df38292d748069d0525670800167212!/OpenDocument.

- Participation. This element of the course evaluation (to be discussed further in class) will be based on attendance and participation in small group and other learning activities over both parts of the course (predominantly on Part II). Value: 15% (graded).
- A final course essay that will focus on a pre-set question, case study or reading (to be discussed further in class during Part II). The essay is limited to 10 double-spaced, type-written, 12 point font pages. It is due, following Part II, at the Osgoode Student Services office by 3:00 pm on 1 February 2008. Students' numbers and the name of their professor should be clearly marked on the front page of the essay. In this essay, students should use a critical and reflective approach to analyze and discuss the question, case study or reading. This essay is specifically not an opportunity simply to summarize course materials. The essay is based on the course materials, course discussions and students' own observations and experiences and should therefore, again, include no outside research. Value: 65% (graded).

ACADEMIC INTEGRITY AND OTHER IMPORTANT POLICIES

The York University Senate Policy on Academic Honesty applies to this course. See online: <http://www.yorku.ca/secretariat/policies/document.php?document=69>. Please do not hesitate to ask if you have any questions about the policy or its application to this course.

All students are expected to familiarize themselves with the York University policies regarding student conduct and accommodation for students with disabilities and for religious observance. See online (York University Senate Committee on Curriculum and Academic Standards): http://www.yorku.ca/secretariat/senate_cte_main_pages/ccas.htm.

COURSE STRUCTURE

The course emphasizes problem-oriented, active learning. It will be taught – in two main parts – using plenary, section and small group settings. During small group sessions (particularly in Part II), teaching tools such as simulations, problems, case-studies, role plays, fictional accounts, biographies, films, collaborations, etc. will be used to encourage students to immerse themselves actively into complex ethical, professional and ICT contexts. For room and times of classes, please consult the Osgoode course calendar.

Although not part of this course, students should also be aware of – and are encouraged to attend – the Chief Justice of Ontario, Advisory Committee on Professionalism, Ninth Colloquium on the Legal Profession, “Ethics in Action”, to be held at Osgoode Hall Law School on 19 October 2007.²

² For information about the colloquium (which is free for pre-registered law students), see online: Law Society of Upper Canada <http://ecom.lsuc.on.ca/html/colloquia/>.

COURSE SCHEDULE**PART I (4-7 SEPTEMBER 2007)****DAY 1: INTRODUCTION AND VISIONS OF ETHICAL LAWYERING****OVERALL LEARNING OBJECTIVES**

The overall learning objectives of Day 1 are to introduce the course and to introduce students to several different possible visions of ethical lawyering in a global community.

QUESTIONS TO CONSIDER

- What kinds of lawyering visions are found in the Canadian legal profession?
- Do any of these visions resonate with your vision or tentative vision of lawyering?

ORGANIZATION***Plenary (1.5 hours)***

Welcome and Course Introduction

- Dean
- Instructors and Teaching Assistants
- OPIR Director

Panel: "Lawyering Visions"

- Addressed in this panel will be the following questions: What is your lawyering role? What is your vision of an ethical lawyer in a global community? How do you understand your lawyering role and are you guided by some notion of justice and/or public interest? How do your personal commitments and sensibilities influence how you approach your legal work?

Panellists

- The Honourable Stephen T. Goudge, *Ontario Court of Appeal* (moderator)
- Raj Anand, LSM, *WeirFoulds LLP*

- Kim Pate, Executive Director, *Canadian Association of Elizabeth Fry Societies*
- Heather J. Ross, *The Ross Firm*

READINGS FOR DAY 2

Please read the following materials in preparation for Day 2.

- William H. Simon, “Visions of Practice in Legal Thought” (1984) 36 Stan. L. Rev. 469 at 469
- Chief Justice on Ontario, Advisory Committee on Professionalism, Working Group on the Definition of Professionalism, “Elements of Professionalism” (October 2001, rev’d December 2001 and June 2002), online: Law Society of Upper Canada
<http://www.lsuc.on.ca/news/pdf/definingprofessoct2001revjune2002.pdf>
- Rosemary Cairns Way, “Reconceptualizing Professional Responsibility: Incorporating Equality” (2002) 25 Dal. L. J. 27 (excerpts)
- David B. Wilkins, “Identities and Roles: Race, Recognition, and Professional Responsibility” (2005) 57 Md. L. Rev. 1502 (excerpts)

DAY 2: VISIONS OF LAWYERING AND AN INTRODUCTION TO THE LEGAL PROFESSION

OVERALL LEARNING OBJECTIVES

The overall learning objectives of Day 2 are:

- building on the issues discussed on Day 1, to develop students’ ideas and thinking about various lawyering visions including the multiplicity of lawyers’ ethical and professional identities in multicultural and global contexts, and the possible visions and roles that students have for themselves in light of those contexts;³ and
- to introduce students to the legal profession and notions of professionalism in a global community and to relate these issues to their own visions and roles as lawyers.

³ This introduction to the multiplicity of lawyers’ roles and lawyering visions lays a foundation for Part II, which explores these themes in greater depth in cross-cultural and ICT contexts and introduces external moral frameworks for evaluating legal problems.

QUESTIONS TO CONSIDER

- What does lawyering mean to each of us personally and how have representations of lawyering in popular culture influenced our own understandings of lawyering?
- What is a lawyering vision? What kind of lawyering visions are found in the Canadian legal profession? What is *your* lawyering vision?
- What range of roles do lawyers play in a multi-cultural society?
- What is a profession?
- What is meant by “professionalism”?
- What are the implications of the profession’s historical social composition and norms of “gentlemanly civility” for the present-day profession?

ORGANIZATION***Small Group (1.5 hours)***

Issues/Questions

- What does it mean to be a lawyer?
- Introduce the concept of lawyering visions, the multiplicity of visions of lawyering: e.g. lawyer as collaborator, lawyer as deal-maker, lawyer as expert, lawyer as facilitator, lawyer as negotiator, lawyer as translator/storyteller, lawyer as friend, lawyer as hired gun, etc.
- Identify and discuss particular examples of lawyering visions by discussing the visions developed during the Day 1 panel. How did the panellists understand their work and themselves as professionals? Were they guided by some notion of justice and/or public interest? How do their personal commitments and sensibilities influence how they undertake their legal work? Do any of these lawyering visions resonate with *you*?

Section (1 hour)

Issues/Questions

- Discuss the common themes arising in small group sessions.
- What is the legal profession?

- What is the significance of being a member of the legal profession? How do multiculturalism and ICT issues influence these questions?
- What is “professionalism”? How is it defined by the Chief Justice’s Advisory Committee on the Profession and what is missing from this definition? How much play does the profession’s “service” obligation get and what is meant by it?
- Discuss some relevant historical issues and blind spots?

READINGS FOR DAY 3

Please read the following materials in preparation for Day 3.

- Roderick A. Macdonald, “Access to Justice in Canada Today: Scope, Scale and Ambitions” in Julia Bass, W.A. Bogart and Frederick H. Zemans, eds., *Access to Justice for a New Century – The Way Forward* (Toronto: The Law Society of Upper Canada, 2005), pp. 19-31, 99-101
- Marc Galanter, “Access to Justice as a Moving Frontier” in Julia Bass, W.A. Bogart and Frederick H. Zemans, eds., *Access to Justice for a New Century – The Way Forward* (Toronto: The Law Society of Upper Canada, 2005), pp. 147-152
- Ab Currie, “A National Survey of the Civil Justice Problems of Low- and Moderate-Income Canadians: Incidence and Patterns” (2006) 13 Int’l J. Legal Prof. 217 (excerpts)
- Report of the Canadian Bar Association Task Force on Gender Equality in the Legal Profession, “Touchstones for Change: Equality, Diversity and Accountability” (Ottawa: The Canadian Bar Association, 1993), pp. 17-18
- Susan McGrath, “Comment: Law as a Profession – Not Just a Business” *The Lawyers Weekly* 25:31 (16 December 2005) (QL)
- Recall Rosemary Cairns Way, “Reconceptualizing Professional Responsibility: Incorporating Equality” (2002) 25 Dal. L. J. 27 (excerpts)

DAY 3: PROFESSIONALISM, ACCESS TO JUSTICE AND THE PUBLIC INTEREST

OVERALL LEARNING OBJECTIVES

The overall learning objectives of Day 3 are to:

- build on the discussion of professionalism by developing the notion of the profession’s connection to the public interest; and

- discuss what is meant by “access to justice” and how it connects to our understanding of professionalism and the public interest.

QUESTIONS TO CONSIDER

- If the legal profession justifies its existence and self-regulation by reference to the “public interest”, who is the “public” and what is the “public interest”, particularly in multi-cultural and ICT contexts?
- Can the “public” be defined only in terms of the political borders of the Canadian state?
- What is meant by “access to justice”? Does the profession have a responsibility to challenge and eradicate barriers to access to justice? If so, what barriers, whose access, and what justice?

ORGANIZATION

Plenary (1.5 hours)

Introduction

Panel: “Professionalism, Access to Justice and the Public Interest”

- Addressed in this panel will be the following questions: What does “access to justice” mean? What is its connection to professionalism and the public interest? What are some of its current problems? What are some potential approaches to addressing those problems?

Panellists

- Janet Leiper, Visiting Professor of Public Interest Law (and former Chair of Legal Aid Ontario), *Osgoode Hall Law School* (moderator)
- Aly Alibhai, Senior Counsel, International Legal Programs Section, *Department of Justice, Government of Canada*
- Avvy Go, Director, *Metro Toronto Chinese & Southeast Asian Legal Clinic*
- Murray Klippenstein, *Klippensteins, Barristers & Solicitors*

Small Group (1 hour)

The small groups, in light of the panel discussion, will then take up the following questions.

- What does it mean to claim that the legal profession exists in the public interest?
- If the legal profession's self-regulated monopoly is justified by reference to the "public interest," who is the "public" and what is the "public interest"? Are only some lawyers "public interest" lawyers or are all lawyers "public" lawyers in some sense? How might we think about the "public" given the diversity of geographic regions, social groups and individual citizens? Can the "public" be defined only in terms of the political borders of the Canadian state?
- What is the nature of the profession's obligation to the public interest? Is it discharged by advancing clients' interests? By performing a certain amount of *pro bono* work? By serving on volunteer boards? Etc.
- Does the profession have a responsibility to challenge and eradicate barriers to access to justice? If so, what barriers, whose access, what justice and where (e.g., inside or outside Canada)?

READINGS FOR DAY 4

Please read the following materials in preparation for Day 4.

- James R. Elkins, "Thinking Like a Lawyer: Second Thoughts" (1996) 47 Mercer L. Rev. 511 (excerpts)
- Sophie Bryan, "Personally Professional: A Law Student in Search of an Advocacy Model" (2000) 35 Harv. C.R.-C.L. L. Rev. 277 (excerpts)
- Marilyn Poitras, "Through My Eyes: Lessons on Life in Law School" (2005) 17 C.J.W.L. 41

DAY 4: ETHICAL LAWYERING AND LEGAL EDUCATION

OVERALL LEARNING OBJECTIVES

The overall learning objectives of Day 4 are to:

- consider the role of legal education;
- identify the importance of ethics, professionalism and ICT concepts in current approaches to legal education; and

- engage critically with the issues developed during the first three days of Part I, and further, to discuss students' expectations about ethics and professionalism in the context of the coming months and years at Osgoode Hall Law School.

QUESTIONS TO CONSIDER

- What is the role of legal education?
- How are current notions of ethics and professionalism re-shaping the way we think about legal education? What will these issues mean for students over their three years at Osgoode?
- What do the concepts of “ethics”, “professionalism”, “access to justice” and the “public interest” mean for a multi-cultural and diverse profession collectively? In ICT contexts? For lawyers and law students individually? For *you*?

ORGANIZATION

Small Group (1.5 hours)

Issues to Address

- Discuss legal ethics and professionalism in the context of legal education.
- A short exercise or role-play may be used during this session.

Section (1 hour)

Issues to Address

- Discuss overall issues and objectives of Part I.
- Recall the animating principles of the OPIR program and their relevance to the issues discussed in this course.
- Discuss the reflective essay.
- Briefly discuss Part II of the course.
- Conclusion.

- END OF PART I OUTLINE -

PART II (7-18 JANUARY 2008)**BRIEF GENERAL OVERVIEW**

A detailed outline and set of materials for Part II will be provided prior to the start of Part II. However, in general terms (and as previously introduced above in the “introduction”, “background” and “learning objectives” sections of this course outline), Part II of the course is designed to:

- discuss in more detail the ethical and professional issues introduced in Part I and – through a basic introduction to various strands of ethical theory – locate those issues in broader ethical and moral conversations;
- develop an introductory understanding of ICT concepts; and
- consider the diversity of communities served by lawyers, the practice contexts in which they work, the problems they encounter and the multiplicity of official and unofficial legal orders and ethical systems that are potentially involved in those lawyering contexts.

The format of Part II will again be a combination of plenary, section and small group sessions. In addition, however, one or more detailed “case study” will be used to animate the various ethical and ICT themes that are introduced and developed throughout this course. Active student preparation and participation will be encouraged.

The essential order of topics and issues for the two weeks of Part II is as follows:

- professionalism revisited;
- theories of ethics;
- an introduction to ICT; and
- contextual application of ethical concepts to legal problems and lawyering in a global community through one or more in-depth case studies.