

The Chief Justice of Ontario's Symposium on Lifelong Learning in Professionalism

The following are condensed notes from the Symposium on Lifelong Learning in Professionalism which took place at the University of Toronto on February the 20, 2009. The Symposium consisted of three panels of distinguished members of the legal field who gave speeches on the changing developments in legal professionalism and the continuing need for lifelong learning. The Symposium concluded with the Goodman Lecture, delivered by Justice Stephen Goudge. For access to the full Symposium, please go to: <http://www.clp.utoronto.ca/events/cjo.htm>

This is a summary of Session Two.

Session Two: What are the different approaches to “lifelong learning”? What can we learn from other jurisdictions?

To see the full version of this session see:

<http://mediacast.ic.utoronto.ca/20090220-CLP-2/index.htm>

Dean Brent Cotter:

A description of what's happening in Canadian law schools in respect to legal ethics:

- In 1985 not more than 25% of law students in Canada enrolled in a course of professional responsibility. In 2008, 80.5% of Canadian law students enrolled in a course in professional responsibility.
- In 1985, three of 16 law schools offered a course in legal ethics. In 2008 more than 70% of the law schools offered a legal ethics course.
- In 2008, 80% of instructors at law schools think it should be compulsory.
- Although the number of courses have increased, the focus has not been an emphasis on lecture model; it's an increase in seminar-style classes.
- Also a shift to participatory modes of evaluation.
- Student perspectives: in 2008, the students thought that the classes were academically challenging and interesting, but a painful necessity.
- The figures are encouraging. There are a significant amount of scholars devoting themselves to this field.
- Can't practice law and not be a lawyer — so it's valuable to focus on being an honourable lawyer.

John Hunter:

- The post-call legal ethics course is mandatory in B.C.
- What is professionalism? Presenting Sandra Day O'Connor's definition:
- Two components: One, ethical conduct. Two, civility — a lawyer must act in a civil fashion.

- The second one is controversial. Some say civility doesn't matter. I do not agree with this — I think it is a component of professionalism, but not a component of legal ethics.
- What are legal ethics? Two components of legal ethics: integrity (can you be relied on?); and following certain ethical requirements, such as concepts of solicitor-client privilege, conflicts of interests, duty of loyalty.
- There are four stages in the development of a lawyer's career where legal ethics education should come into play: law school, bar admission course, articling program and post-call education.
- Legal ethics should be highlighted in law faculties because the young lawyers and students are internalizing what it means to be a lawyer. Better then than building it back in when the student graduates and begins practicing.
- Bar admission course — students should actualize ethical skills that they learned in law school.
- Articling program — this provides mentoring for less experienced lawyers in legal ethics.
- Post-call education — in B.C. there are mandatory post-call professional development courses. They are content-less, not targeted, but adult learners learn better if they are self-directed.

Professor Bradley Wendel:

Presented an American perspective on professionalism.

- The regulation in U.S. is not self-regulated. It's regulated mainly by the courts.
- Critical response that teaching ethics misses something. That missing aspect is lumped under the term "professionalism".
- Professionalism is different from complying with the legal rules for dealing with clients.
- The problem with self-regulation is that the profession always has to justify themselves.
- Our profession has to constantly come up with arguments that self-regulation is justified.
- Sometimes what is needed is a good dose of un-civility. (Example: in Virginia, a lawyer argued that prosecuting attorneys were motivated by racial bias. The Judge believed that was uncivil. Turns out, they *were* motivated by racial bias.)
Sometimes being uncivil is needed.
- Idea of civility tends to go along with past notions of the golden age of the law profession — elite gentlemen lawyers with high wisdom and distinction. But in order to make this ideal workable in a complex society, it has to be uncoupled with elite ideals of gentlemen lawyers. Invocation of civility and gentility tends to invoke elitism.
- The more fleshed out the idea of professionalism is, the harder it becomes to teach.

Glenn Hainey:

- Most lawyers, judges, and scholars agree that there is a problem with legal professionalism. Law society statistics show that complaints about lawyer professionalism have increased. One of the problems with professionalism is the inability of lawyers, judges and scholars on agreeing what professionalism actually means.
- Education at law school and post-law school *can* increase levels of professionalism. It will affect the attitudes and motivations of practicing lawyers.
- From mentoring, most lawyers learn about professional judgment and ethics. Lawyers and law students can learn a lot from “horror stories” told by senior counsel.
- Law students must be grounded in professionalism and ethical responsibility and practitioners must continue to learn and develop their professionalism and ethical responsibility. Lifelong learning in professionalism can only succeed if law students build a foundation for ethical responsibility in law school.
- Ontario law society: for lawyers called to the bar in 2010 and on, 24 hours of professional development in first 24 months of their practicing will be mandatory.
- Statistics show that most lawyers do not repeat their professionalism mistakes after receiving complaint against them. This shows that lawyers can be taught how to act, and most only made mistakes because they didn’t know any better.

Justice Alison Harvison Young:

- No one disputes the need to educate lawyers in professionalism. A lot has happened, especially in Ontario in these issues. In the past, the focus has only been on initiating mandatory legal ethics classes in law school, with the thought that that would be good enough. Now, we are beginning to realize that lifelong learning is needed to embrace the fact that classes in law school are not enough.
- The idea of professionalism is confusing: some people think it means courtroom conduct, others their relationship with clients, etc., but it means different things to different people.
- The risk with the stand-alone approach in law school is that it understates other initiatives in the law school context — bridge week at U. of T., this symposium, etc. Those initiatives have an impact.
- The other risk with stand-alone classes is that people will think, “I’ve done my best” and move on and ignore other ways to teach professionalism and legal ethics.
- Students who have practice after exposure to issues are receptive to implementing ideas into daily practice.
- Mentoring is important!