

Hitting the books

In growing numbers, law schools are making the study of legal ethics a prime concern for students.

By Ava Chisling



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If you're a law student wondering why you have to take a legal ethics course, you can probably thank Richard Nixon.

In the United States, the Watergate investigation in the 1970s turned up widespread lawyer involvement in the scandal, and the profession was motivated to take action in response. The American Bar Association ruled that it would only give accreditation to universities that taught ethics. That's largely why today, ethics is a regular part of the American law school curriculum.

But 30 years later, legal ethics is still not a mandatory course at many Canadian law schools. Why not? "We are still developing our sea legs when it comes to teaching ethics in Canada," says Trevor Farrow, an assistant professor at Osgoode Hall Law School in Toronto. "Schools have been slow because there is an historic divide between the academy and the profession.

"It may have started with Watergate," Farrow says. "But events like Enron and Hollinger continue to happen, and the public looks to the involvement of lawyers in these scandals. These events demonstrate that more needs to be done."

Alice Woolley, who teaches ethics and other courses at the University of Calgary Faculty of Law, also recognizes the effect of Watergate on ethics coursework. But she also believes that historically, there was an assumption that ethics could not be taught — either a lawyer knew how to be good, or he didn't.

"The good news is that there seems to be a very broad buy-in now," she reports. "In the past ten years, ethics has gone from a subject of concern to maybe less than five people in Canada to meetings two years in a row of everyone teaching ethics in the country."

Déontologie universitaire

Bientôt les cours de déontologie obligatoires seront la norme.

Ça remonte à Watergate. Le scandale qui a grippé l'Amérique pendant les années 1970 avait éclaboussé de nombreux avocats au passage. La profession juridique savait qu'elle devait agir, et les facultés de droit ont été contraintes d'ajouter l'éthique professionnelle au programme des étudiants.

Curieusement, 30 ans plus tard, le Canada traîne toujours la patte. Même après Enron et Hollinger, les cours de déontologie ne sont pas obligatoires dans toutes nos facultés de droit. C'est dommage, estime Trevor Farrow, professeur adjoint à Osgoode Hall, qui déclare que les scandales financiers récents démontrent l'importance d'une telle formation.

En fait, on a longtemps considéré que l'éthique ne s'apprenait pas — qu'on l'a, ou on ne l'a pas. Heureusement, les mentalités ont beaucoup changé, affirme Alice Wooley, qui enseigne la déontologie à l'Université de Calgary.

Déjà les facultés de droit de l'Université Dalhousie et de l'Université d'Alberta enseignent la déontologie depuis quelques années. À l'Université du Manitoba et à l'Université de Western Ontario, les cours sont obligatoires maintenant.

Si l'importance d'une formation en déontologie fait la quasi-unanimité, il existe encore des divergences d'opinions quant au meilleur moment pour administrer la leçon. Pour certains, le plus tôt, le mieux c'est. « Les étudiants

devraient réfléchir à ces questions dès le début de leur formation en droit, affirme le professeur de déontologie à Western, Stephen Pitel. S'ils attendent jusqu'à la fin de leurs études, ils auront déjà décidé où ils veulent travailler ».

D'autres préfèrent attendre que les étudiants aient acquis certaines bases et développé leur raisonnement juridique. Ils seront ainsi mieux équipés pour apprendre, soutient Woolley. « Les étudiants doivent comprendre la nature des conflits d'intérêts ».

Pour Pitel, il y a cependant des limites à ce que l'on peut transmettre aux étudiants sur le plan de la moralité. « Les décisions d'éthique appartiennent aux étudiants eux-mêmes. Ce sont leurs valeurs fondamentales qui seront déterminantes ».

L'important est de leur transmettre les outils professionnels pour prendre les sages décisions. ■

—Yves Faguy

Not everyone was slow to put ethics in the classrooms. Law schools such as Dalhousie and the University of Alberta have been teaching ethics for years, and some, like the University of Manitoba and the University of Western Ontario, made it mandatory. But at others, the 2007-2008 academic year marked the first time students had to take ethics in order to graduate.

But while consensus is building among law schools that ethics is a critical element of a well-rounded curriculum, there is still disagreement over other issues, such as when the course is best administered. Some say the earlier, the better: "Law schools have taken students and put them into a lawyering box, and that is exactly why we offer a third of the course in the first week of law school," says Farrow. "It is to allow them to reflect on who they are, why they came to law school, and to take those reflections seriously."

At Western, ethics professor Stephen Pitel has the same philosophy. "Students should be thinking about these issues at the beginning of their studies, rather than at the end," he says. "If they wait until their third year, the decisions of where they want to work and the kind of work they want to do are already made."

But Woolley takes a different point of view. "I don't agree with those who believe it should be taught in the first year," she says. "Ethical reasoning should build on legal reasoning, and students who have not had any exposure to legal reasoning are not as well equipped to learn from an ethics class. ... Students have to understand the nature of ethical conflicts and be prepared to resolve them."

Legal ethics professors do agree, however, that the time is ripe for a greater emphasis on ethics. "We certainly see lots of [ethical issues] in the news and in Hollywood," Farrow notes. "In order to address public criticism and disenchantment by

young lawyers, there is a real opportunity for us to talk about it now. We can help make lawyers better and more ethical, but also more interested, engaged and satisfied lawyers."

And there is only so much that an ethics course can accomplish, professors point out. "Ethical decisions are up to the students, and that goes to their core values," says Pitel. "Those are set much earlier than when they come to law school. So the exercise is not to tell people who they should be, but to open doors about who they *could* be — to explain the obligations of a lawyer in the spirit of public interest.

"We are in no way teaching ethics," he adds. "We don't have the moral authority to pass judgment on other people. We are teaching the students an awareness of ethical and professional rules that govern the profession. It is making them aware of an ethical issue that they may otherwise miss."

Woolley agrees. "One has to be very cautious about one's sense of a tangible difference this will make," she says. "It certainly hasn't led American lawyers to avoid some serious ethical crises. I don't think teaching ethics is the panacea to creating an ethical legal profession. But it is useful for those students who are committed to being ethical lawyers and teaching them how to do it."

"For example, I think representing Paul Bernardo was an incredibly ethical thing to do. Do I think people believe that a lawyer who acts for someone who has committed heinous crimes is a wonderful and a good guy? No. But that's not the question. I want my students to be ethical. I don't want them to be popular." ■

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