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## **Tweeter or Twitter? Teaching a Federation Approved Legal Ethics Course**

**Written by: Alice Woolley**

This summer I again provided the Federation of Law Societies with the syllabus for my legal ethics course. The Federation requested the syllabus for, presumably, the purpose of verifying that the University of Calgary's course complies with the Ethics and Professionalism Competency as set out in Table B of the Federation's Implementation Report for the Approved Law Degree. As it did the past two summers fulfilling the Federation's request left me feeling both uneasy and uncertain.

Uncertain because I am not sure what the Federation wants to do with the syllabus. Are they simply ascertaining that it is a stand-alone course on professional responsibility? Is this just something to let them demonstrate that they really are reviewing those programs they approve? Or are they going to review it more substantively to see if it addresses the broad variety of topics set out in Table B (noted below and [here](#))? Will they tell me if they do not think I am teaching the right topics? Will they go beyond the syllabus to see what I am actually teaching in various areas? And – ultimately – is the status of our degree as approved at stake as a result of what my syllabus contains? How much freedom do I still have?

My guess is that, right now, the Federation's review is more of the former kind – simply doing enough to ensure that the approval process has some substance to it. But in my experience (which includes a few years working in regulatory law) regulatory powers tend to get exercised sooner or later. Further, what is the legitimacy in the approval process if it doesn't have some rigour to it? If the Federation is approving our degree as meeting their competencies, and it has stated that that approval requires a review of the content of a stand-alone ethics course, then does an approval process which does not provide that review mean anything?

And uneasy for a variety of reasons, not least of which is that I can say with confidence that there is no way that my syllabus conforms with Table B. That competency requires that an applicant have "demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada and an ability to identify and address ethical dilemmas in a legal context." The Table further specifies that an applicant must know 1) the law governing lawyers in relation to when ethical issues arise; fiduciary duties, conflicts of interest, administration of justice, confidentiality and privilege, professionalism and the administration of justice; 2) the nature and scope of the lawyer's duties; 3) the range of responses to unethical conduct and professional incompetence; 4) different models concerning the role of lawyers. They must additionally have the skills for identifying and making "reasoned decisions about ethical problems" and to think critically about ethical issues.

I do cover many of these topics, but I certainly don't cover all of them. I mention fiduciary duties in passing. While I think I could argue that I cover the administration of justice, I do so more indirectly than directly. Access to justice is always listed in my syllabus, I also always run out of time before I get to it. Sound pedagogy favours depth over breadth; it is better for students to really understand one concept than to have minimal understanding of many. If anything, my syllabus already contains too much material to engage with students in the right way, so its coverage of the Table B topics is likely to go down, not up.

Further, even with respect to the topics that my syllabus does cover, there is no way that a student who has completed my course actually has the knowledge and skills the competency contemplates. How could they? It is a 36 hour course. Coming into it students know little about the area. While I am increasingly incorporating practice problems and analysis into the course, I do not think that any purely academic setting gives students the skills necessary to “identify and make informed and reasoned decisions about ethical problems in practice”. And those students who pass the course with a C or C- can hardly be said to have demonstrated a really sound knowledge of the area. They deserve their passing grades, but I wouldn't overstate what they know. I hope that my students are better off after my course than they were before it, but that's as far as I'd go.

Most importantly, while I recognize the Federation's legitimate concern with the education we provide to law society applicants, having that concern extend to reviewing the content and delivery of specific courses seems fundamentally wrong. Law schools and law school classes, including required courses in legal ethics and professional responsibility, are places for intellectual inquiry and critical thought. The ability to explore new ideas, to criticize existing practices, to question accepted wisdom is at the heart of what universities provide. While I would be unlikely to do so, in my view a professor could cut conflicts of interest from her curriculum while still providing an outstanding course on legal ethics. The resources for learning about conflicts are easily accessible, and are almost certain to be well covered in the bar course and examination, allowing other more foundational questions about the role of lawyers in society to be more richly explored. That may not be my course, but I think it could be a terrific and important one.

If the university legal ethics course loses the freedom of intellectual inquiry, if all it is is a delivery service for the Federation, then in what way is that a university course? And in what way is the professor who teaches it still a professor enjoying the freedom of academic inquiry and practice?

I don't dismiss the weight of the standard response – if we want our graduates to enjoy the privilege of bar admission, then we need to give them what the Federation thinks they ought to have. It is the privileges and qualifications law societies offer that ensure applicants want to attend our school. In my view the Federation and law societies do have a legitimate interest in the education we provide.

But at the same time, if the Federation wants its applicants to have a *university* education, an academic course in legal ethics, then they also need to recognize that universities have certain essential characteristics without which they cease to provide the legitimacy and intellectual authority that the law societies want their lawyers to enjoy by virtue of their LLB or JD degrees. Dictation of the content of an ethics course eliminates those characteristics; the education in that course may be something, but it is not university education. And the person who provides it is a source of information, but she is not a professor.

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