

Foreword

THIS YEAR MARKS THE 50TH ANNIVERSARY of the Osgoode Hall Law Journal.¹ It also represents essentially fifty years since the emergence of modern Canadian professional responsibility scholarship, with the publication of Mark Orkin's *Legal Ethics: A Study of Professional Conduct*.² As Adam Dodek acknowledges in his sweeping exploration of the landscape of Canadian legal ethics scholarship, Orkin's treatise remains one of the few, and still leading, treatments of the subject published in Canada over the past half century.³ The Foreword to Orkin's 1957 treatise identifies the duties "owed by" the lawyer—"to his client, to the court, to the state, to his fellow lawyers, and finally to himself as a man of honour"—which are "often in apparent, and sometimes in very real, conflict."⁴ Fifty years later, as evidenced by the articles, commentaries, and reviews in this special issue, we are still thinking about and wrestling with these same challenging and often conflicting duties.⁵

There are several moments of origin for this special issue on legal ethics and professional responsibility. The first is the creation of two new ethics initiatives at Osgoode Hall Law School this past year: the Ethical Lawyering in a Global Community (ELGC) course and the Osgoode Public Interest Requirement (OPIR).⁶ The ELGC is a new, mandatory first year ethics course—delivered in

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1. See Jamie Cameron, "About the Journal," online: Osgoode Hall Law Journal <<http://www.ohlj.ca/>>.
 2. Mark M. Orkin, *Legal Ethics: A Study of Professional Conduct* (Toronto: Cartwright & Sons, 1957) [*Legal Ethics*].
 3. Adam M. Dodek, "Canadian Legal Ethics: Ready for the Twenty-First Century at Last" (2008) 46 Osgoode Hall L.J. 1 at 3, n. 4 and accompanying text. See also Adam M. Dodek, "Canadian Legal Ethics: A Subject in Search of Scholarship" (2000) 50 U.T.L.J. 115.
 4. J. R. C., Foreword in *Legal Ethics*, *supra* note 2 at ix.
 5. See *e.g.* Trevor C.W. Farrow, "Sustainable Professionalism" (2008) Osgoode Hall L.J. 51 at 73, n. 126 and accompanying text.
 6. See *e.g.* Osgoode Hall Law School, "Ethical Lawyering in a Global Community" course,

two separate intensive sessions over three weeks in the first year of law school—that immerses students in the practical, professional, and ethical challenges of modern lawyers working in pluralistic local and global communities. The OPIR program—amounting to forty hours of unpaid public interest law-related work—requires all Osgoode students to engage in and reflect upon the public interest element(s) of at least one law-related initiative prior to graduation. Both of these initiatives are firsts in Canada in terms of their scope, format, and content. They are also examples of a growing number of pedagogical initiatives in Canada⁷ designed to address a long-standing dearth of education at law schools in the areas of ethics and professional responsibility.⁸

As the inaugural course director and as one of the instructors of the ELGC course, I spent a significant amount of time with my students wrestling with numerous ethical and professional challenges taken up anew by the articles and commentaries in this special issue. For example, the competing obligations of vigorous representation by a lawyer in a profession that is increasingly making space for robust and pluralistic understandings of a lawyer's role as a person of "honour"—as contemplated by Orkin fifty years ago⁹ and again in this special issue in the articles, for example, by myself, Lorne Sossin, and Alice Woolley—dominated the classroom debates and student essays in the ELGC course this year. And no doubt these issues will continue to dominate these debates and essays for years to come. Equally prevalent in the ELGC and OPIR programs and discussions were more specialized challenges of the lawyering role, such as challenges faced by lawyers for governments and for special needs clients, as discussed by Allan Hutchinson and Andrew Kaufman in this special issue. So it is no coincidence that the lead-off issue of this 50th anniversary year of the Osgoode Hall Law Journal is focused on legal ethics and professional

online: <<http://osgoode.yorku.ca/QuickPlace/trevorfarrow/>> ["ELGC"]; Osgoode Public Interest Requirement Program, "First Year Degree Requirements," online: <http://www.osgoode.yorku.ca/llb/first_year_requirements.html> ["OPIR"]. For a brief discussion of these programs, see "Sustainable Professionalism," *ibid.* at 54, n. 9 and accompanying text.

7. For a discussion of some of these initiatives, see *e.g.* "Sustainable Professionalism," *ibid.* at 54, nn. 8-9 and accompanying text.
8. See *e.g.* Harry W. Arthurs, "Why Canadian Law Schools Do Not Teach Legal Ethics" in Kim Economides, ed., *Ethical Challenges to Legal Education and Conduct* (Oxford: Hart Publishing, 1998) 105.
9. *Legal Ethics*, *supra* note 2 at ix.

responsibility, which are areas of teaching and research that have clearly become significant priorities for both Osgoode Hall Law School and, increasingly, for Canadian law schools generally.

The second moment of origin for this special issue came in connection with Osgoode Hall Law School's hosting of the Chief Justice of Ontario's Advisory Committee on Professionalism, Ninth Colloquium on the Legal Profession, entitled "Legal Ethics in Action."¹⁰ The Colloquia series,¹¹ which began in October 2003, has produced a number of high-quality panel presentations and papers,¹² and has become an integral part of the exciting research and pedagogical initiatives in the areas of legal ethics and professionalism that have developed in Canada over the past number of years.¹³ Most of the authors of the articles and commentaries in this special issue participated at the Ninth Colloquium; and most of the ideas and arguments developed in these articles and commentaries were also raised, debated, and developed at that Colloquium.

The third moment of origin for this special issue is a much more personal moment. My introduction to the academic side of legal ethics and professionalism—following my time as a litigator in Toronto—came when I worked as a research assistant for Andrew Kaufman at Harvard Law School on several projects, including his leading professional responsibility casebook.¹⁴ Because of this formative experience, I was delighted when Professor Kaufman

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10. See Chief Justice of Ontario's Advisory Committee on Professionalism, Ninth Colloquium on the Legal Profession, "Legal Ethics in Action" (19 October 2007, Osgoode Hall Law School, York University), online: Osgoode Hall Law School <<http://osgoode.yorku.ca/conferences/Colloquium.pdf>>. Special mention should be made here of the major contribution that the Honourable Stephen T. Goudge, Judge of the Court of Appeal for Ontario, has made and continues to make to the work of the Advisory Committee, as well as to the teaching and thinking about legal ethics and professional responsibility in Ontario.
 11. See Chief Justice of Ontario's Advisory Committee on Professionalism, online: <<http://www.lsuc.on.ca/news/a/hottopics/committee-on-professionalism/>>.
 12. See *ibid.* at "Papers from past colloquia," online: <<http://www.lsuc.on.ca/latest-news/a/hottopics/committee-on-professionalism/papers-from-past-colloquia/>>. Special mention should be made here of the tireless contribution that the Honourable Paul M. Perell, Judge of the Ontario Superior Court of Justice, has made to the success of the Colloquia series.
 13. See *supra* note 7 and accompanying text.
 14. Andrew L. Kaufman & David B. Wilkins, *Problems in Professional Responsibility for a Changing Profession*, 4th ed. (Durham, NC: Carolina Academic Press, 2002).

accepted our invitation to participate on a panel at the Ninth Colloquium at Osgoode this past year. I was also delighted when he agreed to submit his comments from that panel in the form of a commentary to this special issue.

To me, this collection of articles, commentaries, and reviews forms an exceptional special issue on legal ethics and professional responsibility. The pieces are topical and timely. I hope that they will be of use to academics and practitioners alike. I also anticipate that they will add significantly to the growing body of literature on legal ethics and professional responsibility here in Canada and abroad.

Trevor C.W. Farrow
Guest Editor