Ethics and Professional Responsibility

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The legal profession

Core purpose:
- To serve the public interest of ‘justice.’
- Driven by common good.

Privileges:
- Right to engage in self-regulation.
- The exclusive right to perform particular functions.
- Special status.
What is ethics?

What ought one to do?
Ethics

Ethics of a Profession

Aligned

Your own ethics
Ethical framework of the legal profession

External Factors:
- Laws: Legal Professions Act, Anti-Discrimination Legislation etc.
- Societies and Associations: Law Institute of Victoria.
- Government and Firm structures.
- Competitors and peers: ‘best practice.’
- Clients.
- Indices and surveys.
- Economic trends and world events.
- Society and community expectations.
Focus on the legal profession in Victoria

- Legislation and codes of conduct:
  - Legal Professions Act 2004:
    Legal Services Board
    The Legal Services Commissioner
    The Victoria Civil and Administrative Tribunal
  - Legal Profession Regulations 2005.
- The Law Institute of Victoria.
- Public Administration Act.
- Code of Conduct.
Internal Factors:
- Organisational structure: management, divisions, teams and support functions.
- Leadership and role-modelling.
- Values statements and reporting.
- Remuneration policies and practices.
- Recruitment and employment policies and practices.
- Risk management policies and procedures.
- Sign-off processes: giving advice.
- Precedent and document management.
- Training and performance management.
- Office environment.
The individual in the workplace

Moral Compass
Own values
(upbringing, family, culture, education etc.)

Aligned

Duties as a professional
- Profession
- Clients
- Fiduciary
- Confidentiality
- Obey laws
- Follow regulations
- Report to boss
Support to do the right thing

- Team / colleagues.
- Manager / boss.
- Human Resources.
- Compliance: policies and practices.
- Department practices.
- Previous education and study.
- Ethical framework of the Government system.
- Lawyers and regulators.
- Moral compass.

Despite all these factors, it is likely that employees will still face ethical dilemmas when employed.
Challenges to individual integrity

- Being asked to do something that isn’t right.
- Being tempted to do something that isn’t right.
- Witnessing bad behaviour.

Such dilemmas can be made worse when you are:
- Time poor.
- Under pressure.
- Unsupported.
- Unsupervised.
- Stressed.
- Fatigued.
- Isolated.
Erosion of ethical workplaces:

- Moral muteness.
- Limited view of stakeholders.
- Unthinking custom and practice.
- Faking it.
- Corporate self-deception:
  1. Tribalism
  2. Legalism
  3. Moral relativism
  4. Scientism
When does a problem involve ethics?

- If it makes you reflect on what is a correct and incorrect response.
- If you are forced to consider where your obligations and duties lie.
- If it raises moral problems for a member of the team.
Dilemmas

- Societal values
- Personal values
- Organisational values
- Professional values
Professional dilemmas

1. Conflict of duties:
   - Common good.
   - Justice.
   - The public interest.
   - Professional obligations.
   - Clients: wants, interests and needs.
2. Issues with the law itself:
   - The law on its own is insufficient.
   - The law is inappropriate for regulating some parts of business activity / personal lives.
   - The law usually lags ethical and social developments.
   - The law uses opaque moral concepts.
   - The law is sometimes undecided or doesn’t yet exist.
Professional dilemmas

3. Pressure to be ‘commercial’ or ‘realistic’:
   - Push by clients for lawyers to be commercial.
   - Can result in clients ‘fishing around’ for the response/advice they want.
   - A tension can develop between being commercial and ethical.
4. Legal advice vs. policy advice:
   - When advice is sought from legal officers that is in part a matter of policy or management discretion.
   - Foreseeing risks.
5. Moral dilemmas about specific pieces of work or accounts.
Good decision-making*

1. What’s the story?
2. Voices in the conversation
3. Frame the dilemma
4. Generate options
5. Provisional position
6. ‘Devils Advocate’ – identify weaknesses and refine
7. Final check

* The following material has been provided by the St James Ethic Centre
1. What’s the story?
   - What are the facts, what are the assumptions?
   - What are the understandings? ie. the meanings, definitions and culture.
   - Are there any non-negotiables?
   - Are there any extenuating circumstances that “reasonableness”, wisdom and discernment would suggest?

2. Voices in the conversation
   - Identify the significant stakeholders. What would they want? Do their needs compete? If so, who would get priority and why?
   - Identify major values and principles related to the issue. Do any of these compete?
3. Frame the dilemma
   - Right versus Right;
   - Choice of Poor Options; or maybe
   - X versus Y.

4. Generate Options
   - Brainstorm the options – be creative, include all ideas, even the ridiculous.
5. Provisional Position
   - What is your decision?
   - What is your ethical/moral/legal explanation for this course of action?

6. Weaknesses in your position
   - Can your position be modified either to reduce or eliminate these weaknesses while still maintaining its overall strength?
7. Final Check
  - The ‘Golden Rule’
    Putting yourself in the other persons shoes. How would you feel?
  - The Mentor/Respected person Test
    Would my mentor or someone I respect choose this option?
  - Sunlight Test
    How would you feel if your decision was made public?
Incentives to behave ethically?

- Status: promotions.
- Power: more responsibility.
- Additional and varying types of leave.
- Time to volunteer in the community.
- Leisure activities: gym memberships, yoga classes, in-house dining.

How do people feel about incentives like these?
Considering ethics

- Improves trust (deals and transactions happen and matters are resolved more swiftly when based on trust).
- Reduces ‘integrity’ and operational risks.
- Avoids legal and financial penalties for breaches.
- Can strengthen external reputation.
- High ranking in surveys (Employer of Choice) and indices (FTSE4Good and CRI).
- Recruit and retain top quality staff.

**Most Simply:**
It is the right thing to do
General Principle

- What ought one to do?

  Consider:
  - common good
  - justice
  - the public interest
  - professional obligations
  - personal integrity