



LEGAL PROFESSION (LAWG-5939-1) - SYLLABUS

1. COURSE DESCRIPTION

Despite the title of this course, it is not a course about the legal profession as a sociological phenomenon. It is a course about legal ethics and professional responsibility in Canada. The Federation of Law Societies of Canada (FLSC) (<http://flsc.ca>) has developed mandatory competencies for our common law degree that all law students must demonstrate upon graduation (see <http://docs.flsc.ca/National-Requirement-ENG.pdf>). One of the competencies is “Ethics and Professionalism”. In describing the importance of this competency, the FLSC Task Force on the Canadian Common Law Degree stated:

Ethics and professionalism lie at the core of the profession. The profession is both praised for adherence to ethical codes of conduct and vilified for egregious failures. Increasing evidence of external scrutiny of the profession in this area and internal professional debates about ethical failures point to the need for each lawyer to understand and reflect on the issues. In the Task Force’s view, the earlier in a lawyer’s education that inculcation in ethics and professionalism begins, the better.

The Task Force believes that more, not less, should be done in this area and that legal educators and law societies together should be identifying ways to ensure that law students, applicants for admission and lawyers engage in focused and frequent discussion of the issues. To ensure that law students receive this early, directed exposure the Task Force believes a stand-alone course is essential.¹

Successful completion of this course will satisfy this competency.

Another project of the FLSC has been to develop a model code of professional conduct to be adopted by all provinces to ensure consistency in ethical standards for the delivery of legal services across the country. The FLSC has now created an interactive site where individuals can compare the FLSC code and its implementation by the codes of each Law Society across Canada (see <http://flsc.ca/interactivecode/>). The Law Society of Upper Canada has amended its Rules of Professional Conduct to mirror the FLSC Model Code. It came into force in October, 2014. This course will use Law Society of Ontario Code for the course.

¹ Summarized in FLSC Common Law Degree Implementation Committee, “Final Report” (2011) available on-line at <http://flsc.ca/wp-content/uploads/2014/10/APPROVALCommitteeFinalReport2011.pdf>.

2. LEARNING OUTCOMES

Following this course, the student should be able to demonstrate:

... an awareness and understanding of the ethical requirements for the practice of law in Canada, including,

- a. the duty to communicate with civility;
- b. the ability to identify and address ethical dilemmas in a legal context;
- c. familiarity with the general principles of ethics and professionalism applying to the practice of law in Canada, including those related to, circumstances that give rise to ethical problems;
 - ii. the fiduciary nature of the lawyer's relationship with the client;
 - iii. conflicts of interest;
 - iv. duties to the administration of justice;
 - iv. duties relating to confidentiality and disclosure;
 - vi. an awareness of the importance of professionalism in dealing with clients, other counsel, judges, court staff and members of the public; and,
 - vii. the importance and value of serving and promoting the public interest in the administration of justice.²

In addition to these outcomes, students who successfully complete this course should be demonstrate an awareness and understanding of cultural competence, especially in the context of dealing with Indigenous and Black clients.

² This is directly from FLSC, “National Requirement” available on-line at <http://docs.flsc.ca/National-Requirement-ENG.pdf>.

3. ANTI-INDIGENOUS & ANTI-BLACK RACISM

Anti-Indigenous and anti-Black racism are serious systemic problems in all adjudicative processes in Canada. This problem is particularly acute in the criminal justice system. While racism towards all racialized groups is a serious systemic problem, our focus is on Black and Indigenous communities because it is these communities who have been and, continue to be, disproportionately over and under-policed; disproportionately killed or seriously injured by the police; disproportionately denied bail or released with stricter conditions; disproportionately imprisoned; and, disproportionately the victims of wrongful convictions.

With respect to anti-Indigenous racism, the Supreme Court of Canada acknowledged in [R v Barton](#) 2019 SCC 33 that:

[1] We live in a time where myths, stereotypes, and sexual violence against women — particularly Indigenous women and sex workers — are tragically common. Our society has yet to come to grips with just how deep-rooted these issues truly are and just how devastating their consequences can be. Without a doubt, eliminating myths, stereotypes, and sexual violence against women is one of the more pressing challenges we face as a society. While serious efforts are being made by a range of actors to address and remedy these failings both within the criminal justice system and throughout Canadian society more broadly, this case attests to the fact that more needs to be done. Put simply, we can — and *must* — do better. ...

[199] ... In short, when it comes to truth and reconciliation from a criminal justice system perspective, much-needed work remains to be done.

With respect to anti-Black racism, the Ontario Court of Appeal in [R v Theriault](#) 2021 ONCA 517 observed that:

[143] The existence of anti-Black racism in Canadian society is beyond reasonable dispute and is properly the subject matter of judicial notice. It is well recognized that criminal justice institutions do not treat racialized groups equally ... This reality may inform the conduct of any racialized person when interacting with the police, regardless of whether they are the accused or the complainant. ...

[146] In my view, it is incumbent on trial judges to consider relevant social context, such as systemic racism, when making credibility assessments. The trial judge did not err in doing so, and his findings are entitled to considerable deference on appeal.

Similarly, in [R v Morris](#) 2021 ONCA 680, the same Court held:

[1] It is beyond doubt that anti-Black racism, including both overt and systemic anti-Black racism, has been, and continues to be, a reality in Canadian society, and in particular in the Greater Toronto Area. That reality is reflected in many social institutions, most notably the criminal justice system. It is equally clear that anti-Black racism can have a profound and insidious impact on those who must endure

it on a daily basis: see *R. v. Le*, [2019 SCC 34](#), [2019] 2 S.C.R. 692, at paras. [89-97](#); *R. v. Theriault*, [2021 ONCA 517](#), at para. [212](#), leave to appeal to S.C.C. requested, 39768 (July 19, 2021); *R. v. Parks* (1993), [1993 CanLII 3383 \(ON CA\)](#), 15 O.R. (3d) 324 (C.A.), at p. 342, leave to appeal refused, [1993] S.C.C.A. No. 481 ... Anti-Black racism must be acknowledged, confronted, mitigated and, ultimately, erased.

These are powerful exhortations from our highest courts that cannot be ignored by judges, Crown Attorneys, defence counsel and law students. One of the themes of this course will be an exploration of (i) how anti-Indigenous and anti-Black racism manifests itself in the way in which ethical decisions are made and not made by lawyers and (ii) how ethics can be used to disrupt racism and empower vulnerable clients.

Windsor Law is committed to the Truth and Reconciliation Commission's (TRC) Calls to Action, which calls on law schools and many other social and socio-legal systems to both come to grips with the destructive role law and other systems have played in the lives of Indigenous and Métis communities, and to make significant reforms to improve our collective futures. You are encouraged to review the TRC Calls to Action, specifically Calls to Action numbers 27 & 28, at: http://trc.ca/assets/pdf/Calls_to_Action_English2.pdf. The Federation of Law Societies in Canada recently came out with proposed changes to the Model Code to address these Calls to Action. We will examine them throughout the course. The recommendations can be found in our Supplementary Readings folder on Brightspace.

It needs to be said that it is disruptive and painful to talk about racism especially for our Indigenous and Black students. In addition, there is always a danger that in talking about these issues with respect to (in)justice, that we will be triggering and furthering some of the harmful and untrue stereotypes that impose significant burdens on these communities. That said, change requires acknowledgment, understanding, a commitment to take action and to devise creative solutions. The key is to ensure that the instruction and discussion is done in a sensitive and thoughtful manner. I make that commitment to my Indigenous and Black students. We also have supports for our Indigenous and Black students. These can be found here: <https://www.uwindsor.ca/law/1148/wellness>.

4. MENTAL HEALTH RESOURCES

“From time to time, students face obstacles that can affect academic performance. If you experience difficulties and need help, it is important to reach out to someone.” A full list of on- and off-campus resources is available at: <http://www.uwindsor.ca/wellness>. For a list of the resources available at the law school see: <https://www.uwindsor.ca/law/1148/wellness>.

Some of the material we cover including racism (see note above in #3) and violence against women can cause harm to survivors and those close to survivors. It is important that if you are feeling unwell or unsettled with the material, that you take advantage of the resources that are available at the law school and on campus.

Of course, we all have a responsibility to ensure that we minimize the harm and trauma caused by teaching sensitive material.

5. **SEXUAL MISCONDUCT RESOURCES**

The University of Windsor values dignity, respect and equality for all individuals and strives to foster an atmosphere of healthy attitudes and behaviours towards sexuality, sex and gender. The University is committed to maintaining a healthy and safe learning, living, social, recreational and working environment. The University's sexual misconduct policy can be found here: <https://www.uwindsor.ca/sexual-assault/301/university-policies>. If you wish to speak confidentially about an incident of sexual violence, please contact the Office of Sexual Violence Prevention, Resistance, and Support by email at svsupport@uwindsor.ca. Dusty or Anne will be happy to follow-up to discuss the supports and information that will be most helpful to you. Please note, you do *not* have to formally report your experience in order to receive support, resources, and guidance. If you would like to consider filing a formal complaint with the University, or have questions about policies and procedures regarding sexual misconduct, Dusty and Anne can also provide this information and assist with the process.

6. **RELEVANT ACADEMIC AND ACCOMMODATION POLICIES**

All relevant academic and accommodation policies for the law school can be accessed here: <https://www.uwindsor.ca/law/student-resources/41/forms-and-policies>.

7. **CLASSES**

Date: Wednesday
Time: 8:30 am – 11:25 am
Location: LG-0150

All class power-points will be posted on Brightspace.

8. **RECORDING CLASS**

I will not be recording classes. However, all students may record lectures, provided that the recording is for their own personal study use. Recordings are intended to permit lecture content review to enhance understanding of the topics presented. Recordings are not a substitute for attending class and, of course, you cannot record a class for personal use if you are not in class to conduct the recording. To assist students in recording class, I will be using a microphone.

Regulations and limits surrounding recording of lectures are covered in the fair dealings section of the Federal *Copyright Act*. The *Copyright Act* and copyright law protect lectures by University lecturers. It is therefore stressed that the material recorded still belongs to the instructor and can only be used for personal study in the course in question. Student who record lectures may not share, distribute, email or otherwise communicate or disseminate these materials. If a student shares or disseminates a recorded lecture in any way (including transcription), thereby breaching copyright legislation, the student will be subject to University misconduct policies, at a minimum, and may be subject to other legal action including disclosure of the misconduct to the Law Society of Ontario as part of the “good character” requirement. The University has implemented a new policy on recording guest lectures and student presentations as well as limits that may be placed on what is recorded: see <https://tinyurl.com/wgfenjn>.

9. **OFFICE HOURS**

My office is on the second floor - #2310. Office hours will be held on Wednesday from 12:00 to 1:00 pm. Office hours are also available by appointment although I will be in my office most days and students should feel free to drop by with questions. Extended online office hours will be offered before the final exam.

To book an appointment, please contact my Assistant – Maureen McClary maureen.mcclary@uwindsor.ca.

My contact information: tanovich@uwindsor.ca (e-mail); <https://www.uwindsor.ca/law/tanovich/> (website); ext 2966 (phone).

10. **TEXTS**

Required

Alice Woolley, Richard Devlin, Brent Cotter, John Law, *Lawyers' Ethics and Professional Regulation* (4th ed) (Toronto: LexisNexis, 2021)³

Law Society of Upper Canada, *Rules of Professional Conduct* (<https://lso.ca/about-lso/legislation-rules/rules-of-professional-conduct>)

Law Society Act, RSO 1990, Chapter L.8
(<https://www.canlii.org/en/on/laws/stat/rso-1990-c-l8/latest/rso-1990-c-l8.html>)

Other readings will be handed out or posted on our Brightspace site

11. **EVALUATION**

(i) *Method*

1. Class Participation (20%)

Attending Class (5 marks)

Students will receive 5 marks for submitting an attestation to Brightspace at the end of the course that they did not miss more than one class. A template will be provided. It is an all or nothing marks allocation. This is a mandatory and fundamental course and it is expected that students will attend all twelve classes.

Discussion Board Post (5 marks)

Students are responsible for making one post before Reading Week that identifies a recent media story/ case that raises (or should raise) a question about the ethical conduct of a lawyer/law firm. The post should indicate what the ethical issue is and how the student would address/resolve it. While the post can not be the basis of the posting student's op-ed, it may be used by other students as the basis for their op-eds.

³ There have been too many changes to the fourth edition including many additional problems that we will be taking up in class and for which students will be evaluated on as part of their class participation grade for me to recommend that students can continue to use an earlier edition. The book will hold its value for those who want to sell it. It is also an invaluable resource to have for practice.

Legal ethic stories or more generally, stories about lawyers can be found searching newspapers, Law Times, Lawyer's Weekly or Canadian Lawyer. Online sources include SLAW (<http://www.slaw.ca/category/columns/legal-ethics-column/>); ABA (<https://www.abajournal.com/topic/legalethics>).

Leading Problem/Class Discussion (10 marks) (To begin Week #3]

The significant focus of class time will be working through the assigned scenarios and ethics videos. For each class, students will be assigned to a particular scenario identified in the Syllabus for that week. They will be responsible for identifying the issues, providing a point-counterpoint assessment and then answering any questions from the class. If you are assigned for a particular class and are unable to attend, please let me know by e-mail and I will assign you for the next class. These assignments will constitute the primary basis for the class participation grade but all participation will be taken into account.

2. Op-Ed (20%)

The purpose of this assignment is to allow students to take and defend a public position on a difficult ethical issue. When I refer to an “ethical”, I am referring to a situation where there are competing demands on the lawyer in a particular context that have to be resolved when determining a course of action. In order to successfully complete this assignment, students should find a recent case/news story about the conduct of a lawyer or law firm that raises what the student feels is an ethical issue that needs addressing. Students should take and defend a position on why (or why not) the lawyer's conduct raised serious ethical issues.

To assist you in finding an issue to explore, I suggest you look through the index of our casebook to find areas of legal ethics that particularly interest you. Go to the relevant chapter and review the notes and questions. When you find some that interest you, see if there is a recent case/news story that you can write about. It may be that the note/question relies on a news story that is recent enough to give your op-ed sufficient currency value. You can also do an internet search for news stories about the conduct of lawyers in Canada or a CANLII search for cases involving discipline.

You should use the following checklist to ensure that your op-ed topic meets the expectations of this assignment:

1. Have I chosen a topic that focuses on the conduct of a lawyer/law-firm?
2. Have I situated the topic within a recent controversy, case, newspaper article or other source so as to give the topic currency?

3. Have I identified the ethical issue by reference to a theoretical approach to legal ethics, the Rules of Professional Responsibility or law of lawyering?
4. Have I proposed a solution to the problem that should be considered by our regulator (the Law Society of Ontario)?
5. Have I grounded that solution in a theoretical approach to legal ethics, the *Charter*, the Rules or law of lawyering?

How to write an op-ed:

<https://www.theopedproject.org/resources#gettingstarted>. Attached to the syllabus, you will find two examples of op-eds that I have written in relation to lawyers and ethics. See “The Crown should align with justice, not the police” *Ottawa Citizen* (11 Dec 2010).

Your grade will be based on the following criteria: effectiveness of title of piece; currency of topic, originality, persuasiveness, clear and concise identification of problem and solution, degree of support (for example, case law, relevant data, rules of professional conduct) for your position, clarity of writing and compliance with the word limit. The maximum length of the op-ed is 850 words (this is the industry standard).

Marking Sheet:

CRITERIA	E/VG/G/S/P	COMMENTS
Effectiveness of Title		
Originality		
Currency		
Clear & Concise Thesis		
Persuasiveness		
Relevance to Social Justice		
Discussion of Windsor Law Professional Identity		
Degree of Support		
Clarity of Writing		
Other		

Evaluation – E (Excellent); VG (Very Good); G (Good); S (Satisfactory) P (Poor)

Grade: E 18/20; VG 16/20; G 15/20; S 13/20; P 11/20

Student Number:

Grade:

The op-ed must be submitted to Brightspace no later than **4:30 pm on Wednesday, March 6, 2024**. A penalty of 5% per day will be assessed to late submissions.

3. Exam (60%) (TBD)

There will be a final exam. The exam writing period will be **three (3) hours**. Students can bring the Syllabus (must be printed double-sided with no blank pages), their printed *Rules of Professional Conduct* (must be printed double-sided with no blank pages) and the casebook into the exam. In addition, students can bring into the exam a total of 20 typed pages – single spaced (no smaller than 11 font) – of notes they have made themselves (notes cannot be shared or made based on the notes of others). The permitted exam material can be tabbed and notes can be made in them. No other material (including material posted on Brightspace (ie additional readings) or in this Syllabus) can be brought into the exam.

An additional learning outcome of this course is how to synthesize material and how to tab and index statutory-like material (in this case the *Code of Conduct*). This is the pedagogical reason for the limitations on what can be used during the exam.

The exam will be written on your computer using Exam Soft (but the Internet and your hard drive will not be accessible). The exam will consist of a series of short-answer/hypothetical problems/policy question. There will be no true/false or multiple choice questions. **Practice** – a practice bank of questions will be provided in early March.

(ii) Numerical Grade Distribution

All course work is to be marked and final grades submitted using the 100% scale. The average grade for this course will be B (73-76.9) and individual grades will be adjusted to conform to the B average.

12. STUDENT EVALUATION OF TEACHING

A new survey instrument known as Student Perceptions of Teaching (SPT) will replace the old Student Evaluation of Teaching (SET) survey effective in the Fall 2024 semester. In accordance with Senate Bylaws 54, and 55, you will be provided with 15 minutes to complete the STPs online at the beginning of one regular class session within the last 2 weeks of scheduled classes.

13. CLASS TOPICS AND READINGS

January 10 [Week 1]

Introduction to the Course

Readings

Pages 1-8

Tanovich, “Learning to Act Like a Lawyer” (Blackboard)

Questions To Ponder

1. What are the arguments for and against a Code of Conduct for law students?
2. What do you think is the top ethics story of 2023?
3. If someone asked you to fill in the blank _____ to describe the professional work of a lawyer, what word(s) would you use? For example, lawyer as “loyal advocate.”

Scenarios

#1 (page 7); #2 (pages 7-8)

January 17 [Week 2]

Professionalism & Legal Ethics

Specific Topics

Building Blocks of Professionalism

Distinguishing professionalism, legal ethics and professional responsibility

Regulation

Sources

Drawing from theory: essential elements of ethical lawyering

Readings

Pages 9-12; 17-72

Questions to Ponder

1. What is the difference between professionalism, legal ethics and professional responsibility?
2. In 2001, the Chief Justice’s Advisory Committee on Professionalism released its “Elements of Professionalism”. The Committee is currently in the process of revising this document. What is missing? What would you remove?
https://clp.law.utoronto.ca/sites/clp.law.utoronto.ca/files/documents/Elements-of-Professionalism_CLP.pdf
3. What is the difference between professionalism, legal ethics and professional responsibility?
4. What are the sources to guide ethical decision making?
5. How can legal theory assist ethical reflection?

Scenarios

#3-#4 (page 35); #5 (page 55); #7 (page 63).

January 24 [Week 3]

The Lawyer-Client Relationship: Part I – Formation & Termination

Specific Topics

Advertising

Making Legal Services Available

Choosing Clients

Withdrawal & Disclosure of Error/Omission

Readings

Pages 77-105; 152-164

Questions to Ponder

1. What standard should be used to assess ethical/professional advertising?
2. Is the current regulation of legal fees satisfactory?
3. What standards should guide the solicitation of clients?
4. Lawyers' Oath – refuse no cause reasonably founded – should there be a discretion to refuse to accept a retainer?
5. Can a lawyer ever withdraw from a criminal case?

Scenarios

#1 (page 102); #2 (page 103); #10 (page 164); #22-#26 (pages 156-157)

January 31 [Week 4]

The Lawyer-Client Relationship: Part II - Competence

Specific Topics

Competence

AI – CHAT GPT

<https://www.slaw.ca/2023/09/28/ai-and-legal-ethics-2-0-continuing-the-conversation-in-a-post-chatgpt-world/>

Cultural Competence

Reconciliation and the Model Code

<https://flsc.ca/wp-content/uploads/2023/11/Code-Consultation-Report-2023v2.pdf>

Readings

Pages 105-146 (see also the links above)

Questions to Ponder

1. What are the elements of competence?
2. What is the standard for determining incompetence in professional discipline?
3. What is cultural competence? Why is it so important to ethical lawyering?
4. What are some of the challenges in ensuring cultural competence when representing or engaging in lawyering in cases involving Indigenous participants?

Scenarios

#4 (page 117 (see accompanying notes and questions); #8 (page 118); #13 (page 135); #15 (page 139)

We will also watch a video on Cultural Competence and work through questions

on the conduct of the lawyer.

February 7 [Week 5] (This class will be on-line)

Confidentiality

Specific Topics

Definition – Distinguishing Confidentiality and SC Privilege

Explaining Confidentiality

Exceptions

Confidentiality and Withdrawal

Disclosing Evidence of a Crime

Readings

Pages 167-232

Questions to Ponder

1. What are confidentiality/privilege so fundamental to the lawyer-client relationship?
2. What information acquired by the lawyer is confidential? What is the difference between confidentiality and privilege?
3. How should confidentiality be explained to the client?
4. What general principles guide when a lawyer can breach confidentiality?
5. How should we regulate evidence of a crime in a lawyer's possession?

Scenarios

#1-#3 (page 191)

We will watch a video on Confidentiality and work through questions on the conduct of the lawyer

February 14 [Week 6]

Duty of Loyalty/Conflicts of Interest

Specific Topics

Former/current clients

Using client's case for publicity/media

Intimate relationships with clients

Readings

Pages 146-151; 233-310

Questions to Ponder

1. What are the relevant interests at stake in cases involving conflicts?
2. Has the Supreme Court achieved the right balance between the competing interests?
3. How does a lawyer resolve conflicts between the SCC jurisprudence and the rules where there are inconsistencies?
4. Have the rules governing conflicts become too complex?
5. What limits are there on the ability of a lawyer to use his or her client's case for promotional purposes? Writing a book or movie script?

Scenarios

#2 (page 289); #4-#5 (page 310)

We will watch a video on Conflicts and work through questions on the conduct of the lawyer.

February 28 [Week 7]

Ethics in Advocacy

Specific Topics

Pleadings & Discovery

Negotiations

Witness preparations

Cross-examination

Advocacy and civility

Social media

Readings

Pages 313-373

Questions to Ponder

1. What ethical principles should guide a lawyer's decision to send a "demand" or "libel" letter?
2. Is it ethical to lie or mislead during negotiations?
3. Where is the ethical line between witness preparation and coaching? Should it matter in criminal cases whether it is a Crown or defence witness?
4. What authority must be disclosed to the Court by lawyers?
5. Is there a legitimate concern that the "civility movement" will quell resolute advocacy? What constitutes uncivil conduct? How should it be regulated?
6. What are the boundaries for lawyers accessing social media to prepare for their case?

Scenarios

#2 (page 322); #3 (pages 329-330); #5 (page 348); #6 (page 371); #9 (page 372)

We will also watch a video on civility and work through questions on the conduct of the lawyers.

March 6 [Week 8]

Counselling and Negotiation

Specific Topics

Counselling – Central Aspects

Illegal Conduct

Negotiation - Competence

Readings

Pages 375-401

Scenarios

#1-#4 (pages 389-390); #5-#8 (pages 400-401)

March 13 [Week 9]
Ethics and Criminal Law Practice

Specific Topics

Defence Counsel

Prosecution Lawyers

Readings

Pages 405-470

Scenarios

#1 (page 414); #2 (page 417); #3-#6 (page 421); #7-8 (pages 427-428); #9 (page 430); #10-#11 (pages 437-438); #12 (page 441); #13-#14 (page 446); #17-#18 (pages 458-459)

March 20 [Week 10]

In-House Counsel

Specific Topics

Who is an In-House Counsel?

Client Tunnel Vision

Common Ethical Issues

Readings

Pages 511-566

Questions to Ponder

1. What are some of the unique challenges to lawyers working within organizations? Who is the client?
2. What professional rules of responsibility apply?
3. Where should the regulation of lawyers within organizations take place?

March 27/April 3 [Weeks 11-12]

Issues in Regulation

Specific Topics

Good Character

Education

Extra-Professional Misconduct

Diversity

Readings

Pages 569-658

Questions to Ponder

1. What is the nature of the good character requirement? Should it be abolished/reformed?
2. When should the Law Society of Ontario care about extra-professional misconduct by lawyers? What standards are used for discipline?

Scenarios

#3-#4 (pages 613-614)

The Crown should align with justice, not the police

Tanovich, David M

The Ottawa Citizen [Ottawa, Ont] 11 Dec 2010: A.19.

With heightened public concern over the recently revealed treatment of SB, Terry Delay, Adam Nobody (G-20) and other high-profile cases, people are likely wondering whether police violence is on the rise. The answer is probably no. But that answer is of little comfort. The critical question is why we have not seen a reduction in the unjustified use of violence given the number of positive developments in policing.

Over the last 20 years, there has been a greater move toward civilian oversight of policing including the creation of the Special Investigations Unit (SIU) in Ontario. The video camera is now a staple in police stations and so the police know they are being watched. We have seen a new breed of police chiefs who are reflective and thoughtful leaders. As well, police services have begun to focus on ensuring a diverse force, community outreach, sensitivity training and developing a culture of professionalism.

So why have these developments not had the desired effect? That is a complex question. One explanation is that there remains a police culture of impunity that has yet to be penetrated. It is a culture which leads otherwise good and well-meaning individuals to believe and act as if they are "the law" or "above the law." This is the power of culture over individual will. Until this culture is addressed, any accountability reforms will ultimately fail to have their desired effect.

What often gets overlooked in the discussion of this issue is the role that lawyers, criminal justice academics, judges and juries play in enabling a culture of police impunity.

I want to focus here on the role of one such actor -- the Attorney General of Ontario.

The Attorney General has an ethical and constitutional obligation to ensure that his prosecutors remain independent and do not "align" themselves with the police. In some jurisdictions, this line has been crossed. This sends a powerful message to the police to carry on and not to worry because the Crown "has our back" to put it in the vernacular. Consider the following cases.

Last year, the Ontario Privacy Commissioner released her report which examined the practice of Crown jury vetting. Her review found that one-third of Crown offices had asked police to violate our privacy laws and to conduct computer checks of prospective jurors, beyond the required criminal record check. In Barrie, for example, the police were asked to provide any information to ensure that jurors "we" would not want could be removed. As the Ontario Court of Appeal observed two weeks ago, "[t]his use of police resources and attempt to align the Crown with the police is inconsistent with Crown counsel's obligation to ensure that the accused receives a fair trial."

In *R.v. Tran*, the Crown failed to distance itself from the police misconduct. In that case, the Crown invited an officer to sit with him during the trial and to assist with witness preparation. The officer had gratuitously assaulted the accused when he turned himself in and then destroyed evidence and committed perjury to hide the abuse. In June, the Ontario Court of Appeal stayed the accused's conviction for conspiracy to commit robbery. It issued a stern reprimand observing that the Crown's conduct reflected an "indifference to, if not approbation of, the police abuse and attempted coverup" and that the "Crown's conduct was evocative of an alignment with the police, notwithstanding the abuse."

And most recently in the SB case, we see perhaps one of the most egregious instances of "police alignment." As we now know, this was not a case of a young prosecutor making an error in judgment. We have been told that a case management team as well as senior Crowns in the Ottawa office approved her prosecution. So why, upon considered reflection, did they reach their decision when the shocking videotape evidence revealed that she was the victim, not the police? Why did they ignore the very real possibility that SB was sexually assaulted by the officers? And why did they ignore that there was, in fact, no offence committed since individuals are entitled to use reasonable force (such as kicking) to resist an unlawful arrest and assault by police? There is no reasonable explanation other than they stepped out of their shoes as ministers of justice to protect the officers.

Who knows how many other cases involving trumped up charges such as public intoxication, assault police or cause disturbance are out there where the Crown is acting out of a concern for the officers and not the public interest? For example, why is it only now that the Ottawa Crown's office has exposed the two most recent cases of videotaped police misconduct? Would it have done this without the chief's request or the public attention?

Ultimately, the conduct of prosecutors is the responsibility of the Attorney General of Ontario who has the power to discipline them and set policy on when a prosecution should be stopped. Where is he on this issue of the crossing of the line? Why hasn't he had the courage we have seen exhibited last week by Deputy Chief Gilles Larochelle to acknowledge that there is a "problem" with many of his prosecutors?

Why has the Attorney General not yet addressed whether or not he will discipline the prosecutors engaged in unlawful jury vetting? Why has he not publicly acknowledged the misconduct in *Tran*? Why has he taken the extraordinary step of defending the prosecutors in the SB case, suggesting that there was a reasonable prospect of conviction?

It would seem that in this province, at least, the Attorney General is the lawyer for the police, not the public interest. And until he fulfils his constitutional role, the culture of impunity will grow.