



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.

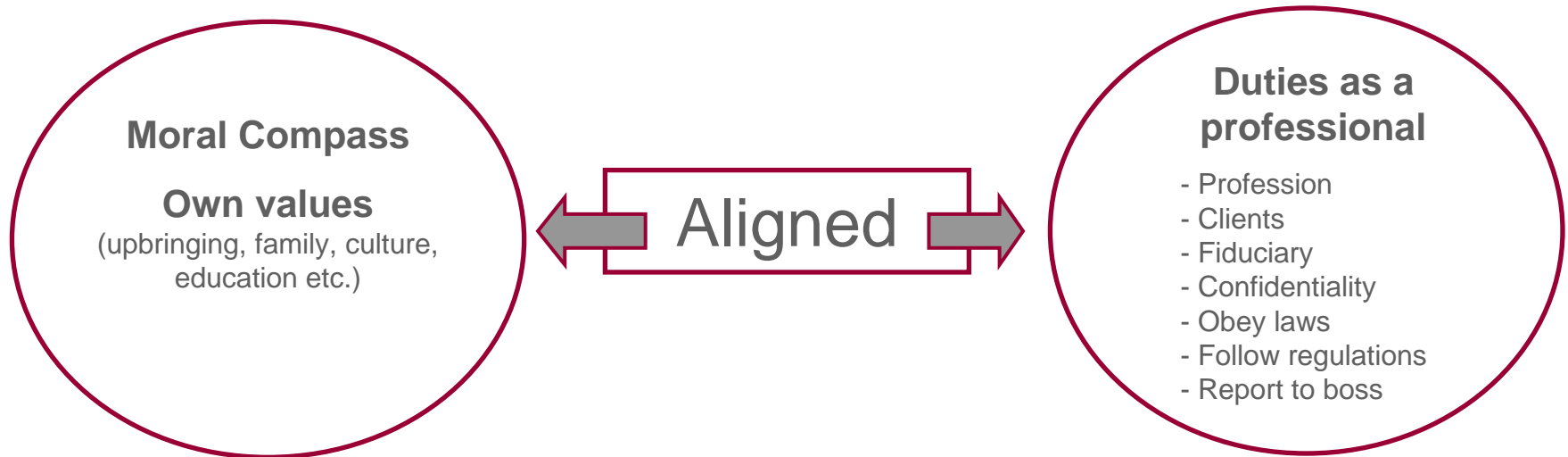
Ethical framework: law in practice



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



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 work cultures



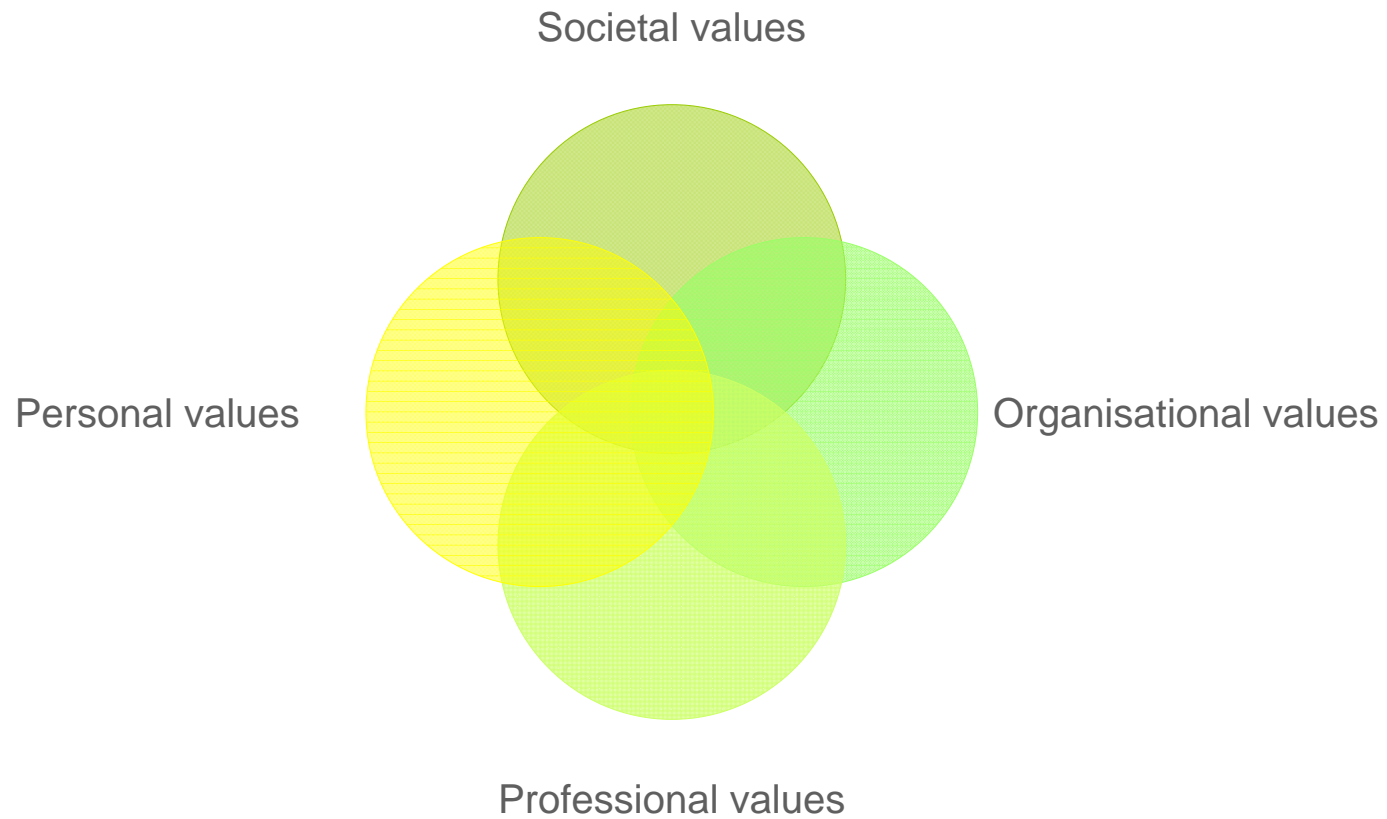
Erosion of ethical workplaces:

- 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



Professional dilemmas



1. Conflict of duties:

- Common good.
- Justice.
- The public interest.
- Professional obligations.
- Clients: wants, interests and needs.

Professional dilemmas



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.

Professional dilemmas



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.

Professional dilemmas



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

Good decision-making

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?



Good decision-making

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.



Good decision-making



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?

Good decision-making

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.
- Financial Rewards: income, bonuses.
- 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