Learning Legal Professionalism: Code-switching or Code Breaking

M. Anne Vespry

Athabasca University, MDDE: 611

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Paralegal Program Description

In Ontario paralegals are members of the self-regulating Law Society of Upper Canada (LSUC) licensed by LSUC to provide legal services. Paralegal training is offered in a variety of community colleges and private academies that must be accredited both by the Ministry of Education and by LSUC.

Paralegal education is determinedly "vocational" and based on students learning legal concepts and procedures with the intention of credentialing (Selman et al, 1998, as found in Spencer, 2006, pp. 1-2). Paralegal education differs from other purely vocational programs in that it includes a professional component with immense, albeit possibly damaging, transformational potential.

Program Context and Socio-Economics

Prior to 2007, there were no paralegal education programs in Ontario. Those working as paralegals ranged from law school graduates who had not been called to the bar (or who had been expelled from it) to the entirely self-educated. This lack of standardized educational requirements for paralegals was seen by the provincial government as one reason why consumers frequently complained about paralegal services. The other reason was that there was no regulating body that handled discipline, leaving it up to the Ministry of Consumer Relations and the Courts to enforce.

In 2006 the legislature decided to increase access to justice by encouraging the paralegal profession while ending the problem of unregulated paralegals and LSUC agreed to be the regulator. LSUC had six months to set up a system of regulation, including education and entrance requirements (Morris, 2012).

The education of lawyers is based on lectures and reading cases with the intent that law students learn to "think like lawyers" and behave "like gentlemen" (Armstrong, 1996, p. 968). Community college programs for law-clerks are taught by lawyers, who rarely have any knowledge of how to teach, other than imitating how they themselves learned. LSUC worked with college program coordinators to decide goals and curriculum for the paralegal program.

Dominant Philosophies

The justice system requires more of practitioners than practical competence. Legal practitioners are expected to conduct themselves according to rules of professionalism, and most particularly civility, that date back to the manners of middle or upper-middle class gentlemen in Victorian England (Schaffer, 1984-1985).

Arguably one assumption underpinning this expectation of professionalism is that only the (male) upper-middle-class descendants of those Victorians should become lawyers or paralegals (Mashburn, 1994). Yet LSUC currently trumpets the growing diversity of the profession and tries hard to promulgate values of equity (2012a). At the same time there is continuing and increasing concern that lawyers and paralegals are not conducting themselves with the required civility (LSUC, 2012b).

The primary assumption that appears to be in play is not, however, active discrimination. Rather the blindness that comes with certain types of privilege assumes that everyone is, or could be (if they wanted, and worked at it) just like "us". Being "blind" to gender, race or class differences is supposed magically to create an even playing field or, at least, a meritocracy.

If all cultures prized the same behaviour and considered the same actions and ways of speaking properly civil, then it would be simple enough to teach that politeness matters in the provision of legal services, and lapses of civility would be seen as just that. Yet as Jensen points

out, "louder, more expressive and emotional human behaviour" (2012, p. 45) may be related to a socio-cultural upbringing that does not value the typical stiff-upper-lip and distant cordiality that Victorian gentry considered the mark of civility.

Although the written curriculum in paralegal education covers only vocational skills, there is also an unwritten curriculum dealing with civility and professionalism. This is visible in the requirement that all instructors in the program be licensed by LSUC. Initially this meant all instructors were lawyers, although gradually some paralegals are joining teaching faculties. The reason given by LSUC for this requirement is that instructors are to "role model professionalism" (Miles & Ryan, 2010) presumably with the intent that students learn professional attitudes and behaviours by osmosis. Given the lack of professional educators involved in LSUC's curriculum development, apparently no one questioned whether anything at all would be learned from an instructor who fully embraced modelling Court-styled civility: quiet non-emotional speech patterns, recitations of fact without opinion, standing or sitting with limited movement, and punctiliously repressed manners.

Evaluation – Theirs and Mine

An independent report on paralegal regulation published this month, claims that "[b]y any objective measure, the introduction [of regulation] has been a remarkable success" (Morris, 2012, p. 2). As far as the paralegal program is concerned, however, Morris states that "[t]he most striking aspect of this review was the universality of criticism of paralegal education. … The second most striking aspect of this review was the near-universal criticism of professional conduct within the paralegal sector…" (2012, pp. 16-17).

If professional conduct is truly a combination of: "scholarship; integrity; honour; leadership; independence; pride; spirit; collegiality; service; and balanced commercialism"

(Working Group on the Definition of Professionalism, 2002, p. 1) it may not be teachable. Those are not forms of knowledge, they are personality traits. Those who are dissatisfied with the level of professionalism inculcated by the paralegal program are, absent personality testing, basing their criticism on judgements of how graduates express their personality. What students need to learn is not a new personality but a new persona… a new way to express themselves.

Educators in the United States have struggled with how to teach disadvantaged children – often African Americans – the tools they need to thrive economically and socially as adults. One method that is having some success is teaching code-switching, "the practice of moving between variations of languages in different contexts" (Coffey, 2008). Rather than telling children that the way they speak or act is incorrect, teachers discuss African American Vernacular English as a language, and teach Business Standard English (B.S.E.) as a separate and distinct dialect. Students are taught to speak B.S.E. on school grounds, and to exhibit business standard behaviour (Code-Switching, 2010).

Paralegal students who have not grown up around role models of Anglo-Saxon professionalism generally come to the program "expecting to learn some stuff, and get a job" (A.F., personal communication, February, 2012). They may realize that there is more they need to know to become successful paralegals, but feel frustrated because it is not being taught.

A technique that is used in language education, contrastive analysis, encourages students to mindfully examine the patterns in their mother-tongue and then to compare and contrast those to patterns in the language they are learning. Contrastive analysis has been highly successful as a tool for teaching children to code-switch (Godley, Sweetland, Wheeler, Minnici, & Carpenter, 2006). It should be tried as a method of teaching students to identify the behaviours that represent professionalism, and to consciously shift personas.

For paralegal programs to be seen as successful within the context of the legal profession, they will need to give students the chance to learn not just the rules of ethical behaviour, but the culture of professionalism and civility valued by LSUC and the judiciary. Yet this will not happen unless LSUC moves away from cryptic complaints about the lack of professionalism among program graduates and gives both schools and prospective students clarity about the program requirements. The coded meanings of civility and professionalism need to be broken open before students can decide whether they wish to learn to switch behaviours, and before instructors can attempt to teach behavioural or cultural code-switching.

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