

Assessing Lawyers' Ethics

A Practitioners' Guide

Many legal practitioners operate in an environment of seemingly endless ethical challenges, and against a backdrop of diminishing public opinion about their morality. Based on extensive research, *Assessing Lawyers' Ethics* argues that lawyers' individual ethics can be assessed and measured in realistic frameworks. When this assessment takes place, legal practitioners are more likely to demonstrate better ethical behaviour as a result of their increased awareness of their own choices.

Assessing Lawyers' Ethics advocates a variety of peer-administered testing mechanisms that have the potential to reverse damaging behaviours within the legal profession. It provides prototype techniques, questions and assessments that can be modified to suit different legal cultures. These will help the profession regain the initiative in ethical business practice, halt the decline in firms' reputations and reduce the risk of state-sponsored regulatory intervention.

Adrian Evans is Associate Dean (Staff) in the Faculty of Law at Monash University, and co-Chair of the International Bar Association's Professional Ethics Committee. He has taught and practised law and consulted in clinical and practical legal education for thirty years. He was Coordinator of Springvale Monash Legal Service Inc., Australia's largest clinical legal education site, from 1988–2000.

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Adrian Evans
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For Maria, Hugh, Dan, James and Angus

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Preface

Effective encouragement of lawyers' ethical behaviour is important, not just to the basic functionality of the legal system, but also to public confidence in its operation. The legal profession acknowledges and to some degree compensates the community for lawyers' mistakes – that is, negligence – but our moral failures as lawyers are imperfectly anticipated and far more damaging. In Australia, recent examples of flawed behaviour include notorious cases of excessive adversarialism, particularly in the abuse of legal process, in efforts to evade payment of compensation to injured persons via document destruction and to hide corporate bribes paid to Saddam Hussein's former Iraqi regime.

Internationally, confidence in lawyers' probity is now so eroded that courts are increasingly wary of automatic reliance on their integrity. But this scrutiny cannot and must not lead us to deny our vulnerability or, at the other extreme, lose our self-confidence. More than ever, ethical legal practitioners are essential to public confidence in the complex governance of modern societies. And the prospects for 'inoculating' lawyers to improve behaviour are promising. While external regulators' scrutiny cannot often identify our dishonest colleagues in advance of their misdeeds, the far larger problem of ethics apathy or oversimplification can be tackled before damage becomes irreversible. Our law societies and bar associations can approach colleagues' confusion and even ignorance of ethics by pre-emptively assessing and periodically reassessing their ethical sophistication in the interests of the community, the economy and especially, ourselves.

This book seeks to guide practitioners through the insights of several disciplines in relation to assessment, and explains and reports on new empirical research as to what practising lawyers might be willing to accept by way of preventative ethical initiatives, in the interests of improving collective behaviour. The prize may be a reinvigorated self-confidence in the utility of the legal profession in capitalist societies not just as a service industry sector, but more importantly as a vital control on the exercise of social and economic power and the wealth it controls.

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Adrian Evans
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