

## ETHICS AND ENVIRONMENTAL LAW CHALLENGING PROFESSIONAL BOUNDARIES

*Town Planning, Environmental Law,  
Local Government, Government Relations,  
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### **ABSTRACT**

This paper explores the relationship between the legal profession and the environment. We pose the question:

**“Does legal profession needs to reconsider its relationship to the environment?”**

We argue that it does. In our argument we consider the dual pressures on the lawyer from, on the one hand, ethics – ethical principles, codes and obligations – and, on the other, the changing values held by society. We argue that the profession, by virtue of its oaths, stands in a unique relationship with society and must reflect change in social values as a part of its ongoing responsibility towards those whom it seeks to represent, in addition to duties to court, client, profession. In this process we examine how a deeper integration of principles of environmental ethics may help to address contemporary pressures facing the legal profession ‘from the outside’, that is from a social perspective. As knowledge of human impact on the environment continues to develop, we ask whether professional ethics needs reconsideration in order to accommodate new principles.

### **INTRODUCTION**

This paper overviews key philosophical approaches to ethics and stresses the link between ethics and changing societal values. Drawing on the emerging field of environmental ethics, it asks whether changed societal values concerning the environment require reconsideration of legal professional ethics given the maturing of the field of environmental law<sup>1</sup>.

The authors’ standpoint is that ethics has a strong relationship to value. What we value most, or what most impresses its value on us, bears a strong relationship to what we perceive is good or what is worth pursuing<sup>2</sup>.

Although various fields of ethics exist, including environmental and professional ethics, what, from the author's standpoint, is most important about these disciplines is that they open for us the possibility of questioning value. In questioning or demanding what ought to be, a space for discourse emerges where our understanding of what is of value can be tested, played with examined and developed.

We note that this area is complex and we are providing a simple synthesis of a complex theoretical field.

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<sup>1</sup> Bates, Gerry, *Environmental Law in Australia*, Lexis Nexis Butterworths, 8<sup>th</sup> edition, at 19

<sup>2</sup> This argument is a strong current in philosophy and has a position in western philosophy from the time of the Greeks. See Robinson, D., Garrett, C., 2003., *Introducing Ethics*, Maryland: Totem Books U.S.A.

## **OVERVIEW OF KEY APPROACHES TO ETHICS**

Values reflect the society in which they are formed. Values change over time and they are influenced by historical conditions. In ethics, particularly in the field of value theory, there is a strong division between instrumental and intrinsic value. Approaches differ as to:

- Those who believe in intrinsic values, which enables principles to be sustained such as human rights, moral imperatives and universal dictums of action (autonomy, beneficence, non-maleficence, justice);
- Those who believe in instrumental values, which enables principles of utility to be sustained: or the utilitarian notion that we can weigh goods based on their consequences for human happiness.

Although there is philosophical argument as to which is more fundamental, this distinction – between intrinsic and instrumental value – has a role in clarifying our ethical priorities. It classifies what things we will take to be good and how good they will see them to be.

The distinction is particularly important in the field of environmental ethics. In considering an ethic towards the environment it is often debated as to whether such must be motivated by the intrinsic value of the environment or by its instrumental value for human life.

## **ENVIRONMENTAL ETHICS**

Again, summarizing a complex field, the authors look at two key notions: anthropocentrism, and epistemology.

### **Anthropocentrism**

Anthropocentrism is simply ‘human-centeredness’. It is the belief that human beings are the central or most significant species on the planet. In the field of environmental ethics it is the standpoint that grants moral status only to human beings. It contrasts with ecocentrism, a nature-centred philosophy which values the earth as a community to which humans belong rather than instrumentally as a commodity that belongs to humans. Ecocentrism is the belief that environmental concerns should take precedence over human beings, and that the rights of human beings should be considered in isolation<sup>3</sup>. Anthropocentrism is the view that human beings are the central fact of the universe to which all other facts have reference, reality is assessed through an exclusively human perspective<sup>4</sup>. Whilst philosophy and moral reasoning are human activities, strong and weak positions are postulated:

- A *strong* thesis places humans at the centre of reality and considers that they ought to be.
- A *weak* thesis recognises that reality can only be interpreted from a human point of view, including imagining reality from the perspective of a non-human entity. It acknowledges

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<sup>3</sup> "ecocentrism, n.". OED Online. September 2013. Oxford University Press.

<http://www.oed.com.ezproxy.slv.vic.gov.au/view/Entry/261559?redirectedFrom=ecocentrism> (accessed November 26, 2013).

<sup>4</sup> "anthropocentric, adj.". OED Online. September 2013. Oxford University Press.

<http://www.oed.com.ezproxy.slv.vic.gov.au/view/Entry/8418> (accessed November 26, 2013).

however that even human ingenuity may be unable to discover what the internal consciousness of cats, dogs, sand-fleas and others may be like<sup>5</sup>.

In overviewing environmental ethics, the approach of Marshall<sup>6</sup> provides a useful outline of key emergent notions. Marshall categorizes three broad approaches:

➤ **Libertarian Extension**

This approach, which accepts the right to uninterrupted freedom of existence, recognises a problematic moral issue where humans 'extend' their rights to non-human animals and/or inanimate entities. Thus Singer, whilst accepting a strong case for preservation of wilderness, argues that it is difficult to know what would be the interest of plants, as non-sentient, in staying alive<sup>7</sup>, concluding that "the life of a being that has no conscious experience is of no intrinsic value"<sup>8</sup>. By contrast, some ecologists argue that "all ontological entities (that is, beings and objects that actually exist), are deserving of moral status or ethical worth ... on the basis of their individual existence"<sup>9</sup>. This approach, based on existence alone, disregards distinctions between sentient and non-sentient objects.

➤ **Ecological Extension**

Ecological Extension, also known as 'eco-holism', recognises the fundamental inter-relatedness of all things in the geophysiological structure of the planet, arguing that the well-being and flourishing of non-human as well as human life has inherent value, independently of its usefulness for human purposes: with richness and diversity of life forms values in themselves<sup>10</sup>.

➤ **Conservation Ethics**

Conservation ethics focuses on the benefits to humankind from ecological systems and life forms, with the environment conceptualised as a means to an end for human pleasure and/or profit<sup>11</sup>. This approach is, arguably, the most prevalent environmental ethic and was the principal ethic informing thinking at the international Rio Summit, United Nations Conference on Environment and Development and the Global Forum<sup>12</sup>.

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<sup>5</sup> Richard Flanagan explores a notion of entrapment in *Goulds Book of Fish*, Vintage 2001.

<sup>6</sup> Marshall, A., 1993, 'Ethics and the Extraterrestrial Environment', *Journal of Applied Philosophy*, Vol. 10 No.2, 227-236.

<sup>7</sup> This is a 'hierarchy of value' similar to that originally advanced by Aristotle. See Vardy, P. & Grosz, P., 1999, *The Puzzle of Ethics*, London: Fount, 222.

<sup>8</sup> Singer, Peter, 1979, *Practical Ethics*, Cambridge: Cambridge University Press, 92.

<sup>9</sup> Brennan, A., 1988, *Thinking about Nature: an investigation of nature, value and ecology*, Routledge London at 223, Attfield, R., 1983, *The Ethics of Environmental Concern*, University of Georgia Press, Athens.

<sup>10</sup> See also Naess, A., Sessions, G., 1984, 'Deep Ecology Eight Point Platform', <http://www.haven.net/deep/council/eight.htm> accessed 27 November 2013

<sup>11</sup> This is contrasted with an ethic that rejects modernity in a loose configuration of spiritual values and feminist critique; see Capra & Spretnak, 1984, *Green Politics: the Global Promise*, E.P. Dutton, New York.

<sup>12</sup> Office of the Environment Department of Conservation and Natural Resources, 1993, *Notes from Rio: Highlights of the United Nations Conference on Environment and Development and the Global Forum June 1992*, Melbourne: OEDCNR

Environmental ethicists explore an ethical approach beyond human self-interest. Thus, Lovelock's, Gaia philosophy views humans as responsible for environmental disasters that affect not only humans, but other animals as well as non-animals, The examples of Exxon Valdez and Chernobyl outweigh human consequences. Lovelock's hypothesis is that Life or Nature is committed to its survival, with the future of the human race insignificant as the Earth (or Gaia) alters its own geophysical structure to halt or obliterate human-engineered environmental damage that threatens its survival because it is primarily committed to ensuring survival and evolution of some kind of organic and inorganic substance, rather than human survival.

## Epistemology and Ethics – Blurred Distinction

Environmental ethics highlights whether the distinction between ethics and epistemology remains useful. Epistemology is the theory of what grounds knowledge, what we know to be the case<sup>13</sup>. By contrast, ethics describes things as *they ought* to be in the world<sup>14</sup>. A line of thinking from Hume onwards suggests that the division between epistemology and ethics is clear cut. Hume argued that one cannot logically derive a moral stance simply from a description of the way things are in the world<sup>15</sup>. Environmental ethicists have argue that “when we talk of the environment as a whole, epistemology and ethics must necessarily connect with each other... . Because we are an inevitable part of the overall ecosystem, we ought therefore to examine our impact upon it, and if such an impact is damaging then we ought to do something about it”<sup>16</sup>. MacIntyre also argues that ethics and epistemology are necessarily connected<sup>17</sup>.

As we argue below, the distinction between epistemology and ethics is crucially important in understanding the place of the legal profession with respect to the environment, and understanding the lawyers obligations as informed by environmental ethics.

## PROFESSIONAL ETHICS

Codes of ethics guide professional conduct by addressing the special moral dilemmas arising from that professional status. Professional obligations source to oath-taking and emerged from religious elements of mediaeval society and scholarly education, applying to occupations “in which a learned knowledge is applied to the affairs of others”<sup>18</sup>. The modern notion of professional ethics has been

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<sup>13</sup> "epistemology, n.". OED Online. September 2013. Oxford University Press.

<http://www.oed.com.ezproxy.slv.vic.gov.au/view/Entry/63546?redirectedFrom=epistemology> (accessed November 26, 2013).

<sup>14</sup> Vardy, P. & Grosz, P., 1999, *The Puzzle of Ethics*, London: Fount, 220-221

<sup>15</sup> Lloyd, D., 1959, *Introduction to Jurisprudence with selected texts*, London: Stevens and Sons, 27.

<sup>16</sup> Ibid.

<sup>17</sup> MacIntyre, A., 1984, *After Virtue*, 2<sup>nd</sup> Ed., Notre Dame: University of Notre Dame Press

<sup>18</sup> Barker, S. 'Professional Ethics' in *Ethics*, 2005, Roth, J (Ed.), 1199

described as “an understanding between society and those in a profession, a bargain from which both sides benefit”<sup>19</sup>.

Legal professional ethics is additionally influenced by the lawyer’s unique position of power. The law stands in a close relationship to power within society and to the major currents of that power. Those skilled and entrusted with the operation of that powerful law, become repositories of knowledge and influence, extending to obligations not only to the court and the client, but to the education and passing of knowledge, law reform, statutory drafting judicial interpretation and law-making. Lawyers are powerful in determining the impact of any regulatory change<sup>20</sup>. Whilst lawyers must eschew any conflict of interest, they tend to act for economically stronger clients who pay well and:

“... (respond) predictably to the social and economic structures in which the practice of law is embedded. ... (I)n practice, justice is rationed by cost barriers and the lawyer’s long-range interests”<sup>21</sup>.

Judges, in interpreting disputes determine legal impact. Lawyers employed by Government can also find their professional duty influenced by regulatory considerations<sup>22</sup>. Law enforcement has been shown to be influenced by the power-differential between it and those with whom it deals<sup>23</sup>.

“It is of the utmost importance that public confidence in the legal profession be maintained. Legal practitioners play an integral part in the administration of justice. The obligations which accompany a practitioner’s position are commensurate with the responsibility involved. The duties of legal practitioners include a duty to uphold the law, a duty to the Court, a duty to clients and a more general duty to members of the public. The Court and the public demand high standards from practitioners. This is reflected in the legislative processes that regulate the admission of practitioners and govern their conduct”<sup>24</sup>.

However, legal professional ethics, like all ethical approaches, is not static:

“From time to time, society should ask itself whether the tacit bargains that have been struck with professional groups are working out well. If they are not, and the balance has shifted away from the best interest of society in certain areas, then renegotiation may be appropriate... More and more ... lawyers are becoming employees of large organizations. As employees, they must accept direction from their employers; therefore, they tend to be

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<sup>19</sup> Ibid., 1200

<sup>20</sup> Kelleher, Leonie, 2013. *Schumpeter’s Bahnbrechen Considered in the Light of Native Title Legislation and Indigenous Entrepreneurship*, PhD thesis.

<sup>21</sup> Macaulay, S., 1979, ‘Lawyers and Consumer Protection Laws’, *Law and Society Review*, Vol14, at 161.

<sup>22</sup> For example, the *Protected Disclosures Act 2012* (Vic) concerns protection of disclosures relating to improper conduct in the Victorian public sector.

<sup>23</sup> Frug, G., 1989, ‘A Critical Theory of Law’, *Legal Education Review*, Vol.1, 43; Roshier, B., Teff, H., 1980, *Legislation and Society in England, Tavistock*

<sup>24</sup> *Legal Practitioners Conduct Board v Clisby* [2012] SASFC 43 at [6].

less independent than was the case in the past. This decreasing independence diminishes their distinctively professional status but does not eliminate it<sup>25</sup>.

ETHICAL ELEMENTS				
Impact	Concepts	Societal Value	Philosophical Stance	Professional Codes of Conduct
Human	Autonomy	Economic model	Epistemology	Oath
Non-human	Beneficence	Capitalism	Ethics	Religious sources
Non-Sentient	Nonmaleficence	Growth	Anthropocentrism	Societal Agreement
	Justice	Materialism		Not static
		Competition		
		Death/ Damage to Human Life		

**Figure 1: Overview of Ethical Elements**  
Source: Researchers

## ***ENVIRONMENTAL LAW***

Within this context, environmental law is vigorously evolving in response to changing societal and economic factors<sup>26</sup>. The field is multi-disciplinary, drawing from wide areas of knowledge and sections of society:

“The world of environmental management and protection is a multi-disciplinary one populated by biologists, zoologists, architects, archaeologists, botanists, planners, landscape architects, chemists, economists, geographers, geologists, engineers and consultants in general, together with a whole host of other disciplines and of course politicians”<sup>27</sup>.

Contemporary environmental law is strongly influenced by the Principles enunciated in the Rio Declaration<sup>28</sup> that guide, internationally, the achievement of sustainable development of land, including the key ‘moral’ principles of inter-generational equity, polluter *ought* to pay and, as knowledge is uncertain at present, precautionary principles. These Principles impose duties on

<sup>25</sup> Barker, S. ‘Professional Ethics’ in *Ethics*, 2005, Roth, J (Ed.)

<sup>26</sup> Bates, Gerry, *Environmental Law in Australia*, Lexis Nexis Butterworths, 8<sup>th</sup> edition, at 2.

<sup>27</sup> Bates, Gerry, *Environmental Law in Australia*, Lexis Nexis Butterworths, 8<sup>th</sup> edition, at 10.

<sup>28</sup> Office of the Environment Department of Conservation and Natural Resources, 1993, *Notes from Rio: Highlights of the United Nations Conference on Environment and Development and the Global Forum June 1992*, Melbourne: OEDCNR

those causing pollution, recognising the need to take account of human needs now and into the future and acknowledging the limitations of existing knowledge of dangers and risk prevention<sup>29</sup>.

“In the space of a few short decades basic resources such as clean air and clean water that had hitherto been considered abundant, safe and inexhaustible are now under threat, not just in countries that have historically suffered from poverty, disease and substandard living conditions, but in the very heartland of nations that occupy the very top rungs of our civilisation in the context of economic development”<sup>30</sup>.

Lord Justice Scarman (as he then was), noted that, if the law and lawyers are to retain relevance to environmental protection, they must find some meaningful way to regulate harmful activities rather than leave it to some specialist administrative agency remote from legal control<sup>31</sup>. The judiciary internationally has referred to the need to take account of the environment in judicial decision-making. Justice Preston of the New South Wales Land and Environment Court has explored ways in which the law can adopt an ecocentric approach and align with the laws of ecology<sup>32</sup>. Some query the value of the adversarial system, with its approach to deeply specialised and complex scientific knowledge and facts<sup>33</sup> and a ‘win at all costs’. They note the danger of discrediting scientific witnesses who, at best, can provide only qualified answers to difficult predictions<sup>34</sup> with real risk that bad science becomes accepted as proven fact<sup>35</sup>. The common law tends to assume “that the scientific method implies exactness and certainty”<sup>36</sup>, something that scientific research can rarely deliver.

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<sup>29</sup> The United Nations Conference on Environment and Development (UNCED) in Rio de Janeiro, June 1992 produced four documents – the Rio Declaration (a statement of general principles), Agenda 21 (an action plan) and two Conventions – Climate Change (ratified by Australia in December 1992) and Biological Diversity (ratified by Australia this entered into force on 29 December 1993). A Statement of Principles on Forests was also agreed.

<sup>30</sup> Michael I Jeffery QC, 2005, Environmental Ethics And Sustainable Development: Ethical And Human Rights Issues In Implementing Indigenous Rights, Environmental Ethics and Sustainable Development, Vol 2, pp 105-120

<sup>31</sup> Scarman, 1974, English Law: The New Dimension Part IV, *The Challenge of the Environment*, Stevens, London.

<sup>32</sup> Brian J Preston, ‘The Environment and its Influence on the Law’ (2008) 82 *Australian Law Journal* 180.

<sup>33</sup> Judge Johnson, 1982, The Role of the Courts in Environmental Law, *Criminal Law Journal*, Vol. 25, 304, Kirby, Michael, 1993, The Future of the Judiciary, cited in Stewart, 1993 Environmental Risk Assessment: The Divergent Methodologies of Economists, Lawyers and Scientists, *Environmental & Planning Law Journal*, Vol 10, 10 at 13, Pincus, C.W., 1988, Alternative Dispute Resolution, *Australian Law News*, 20, Bazelon J in *Ethyl Corp v EPA* (1976) 426 US 941, cited in Oakes, The Judicial Role in Environmental Law (1977) 52 NYULR 498, Fisher, Science, the Environment and the Law in New Zealand (1984) 1 *EPLJ* 295.

<sup>34</sup> Stewart, 1993, Environmental Risk Assessment: The Divergent Methodologies of Economists, Lawyers and Scientists, *Environmental & Planning Law Journal*, Vol 10, 10-18 at 12.

<sup>35</sup> Christie, Toxic Tort Disputes: Proof of Causation and the Courts, (1992) 9 *EPLJ* 302.

<sup>36</sup> Christie, Toxic Tort Disputes: Proof of Causation and the Courts, (1992) 9 *EPLJ* 302 at 313.

Bates suggests additional obligations on individual lawyers:

“just ‘having’ law is not enough; everyone must be vigilant about implementation and enforcement issues, and about driving the policy agenda that leads to the creation of environmental laws”<sup>37</sup>.

Early attempts to shape rights for non-humans, despite some initial judicial support<sup>38</sup>, have gone nowhere in practical terms<sup>39</sup>, although Chief Justice Preston has more recently explored how an ecocentric approach could extend *locus standi* to the environment and its non-human components, such as biota, by appointment of a representative to speak on their behalf<sup>40</sup>. The search for public values is generally undertaken in Australia through public consultation with balancing a matter for politics, but recognition of these public values has been responsible for the uptake of principles of sustainable development and increased penalties for environmental breaches.

A strategy toward a more ecocentric approach to law and policy has been formulated by the Chief Justice of the New South Wales Land and Environment Court<sup>41</sup>. The practice of environmental law demands a strong regard to the public interest, with environmental statutes reflecting a broad societal need to protect the public from harms that are not immediate or short term but far-reaching concerning the maintenance of humanity if not all life on earth.

### **Duty to Environment?**

In 1989, Professor Ben Boer presented a view to the International Bar Association (IBA) that:

*“The concept of sustainable development and what it implies in economic, political and ecological terms, demands that all of us should consider the broader implications and effects of our work ... (T)here would appear to be a case, and strong case, for the development of a*

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<sup>37</sup> Bates, Gerry, *Environmental Law in Australia*, Lexis Nexis Butterworths, 8<sup>th</sup> edition, at 20.

<sup>38</sup> *Sierra Club v Morton* (1972) 405 US 727, Christopher Stone, Should Trees Have Standing: Toward Legal Rights for Natural Objects (1972) 25 *Southern California Law Review*, 450, Christopher Stone, ‘Should trees have standing? Revisited: How far will law and morals reach? A pluralist perspective’ (1985) 59 *Southern Californian Law Review* 1, Christopher Stone, 1987, *Earth and other ethics – the case for moral pluralism*, Harper and Rowe, New York, Smith, What Price a Wedgetail Eagle? An Examination of Penalties Imposed for Harming Protected Species (2004) 21 *EPLJ* 445.

<sup>39</sup> This is perhaps partly due to NGOs increasingly enjoying *locus standi* in their own right.

<sup>40</sup> The Hon Justice B J Preston, ‘Internalising Ecocentrism in Environmental Law’ (2011) paper delivered to the 3<sup>rd</sup> *Wild Law Conference: Earth Jurisprudence – Building Theory and Practice*, 16-18 September 2011, Griffith University, Queensland, available on the website of the New South Wales Land and Environment Court <http://www.lec.lawlink.nsw.gov.au/lec/index.html> at 15.

<sup>41</sup> Footnote 52.

*broad code of ethics which incorporates not only the usual obligations, but includes an obligation to the 'environment' itself.*"<sup>42</sup>

The US National Association of Environmental Professionals (NAEP) since 1993 has encouraged training and research into the ethical issues facing environmental consultants<sup>43</sup>. Key component of the NAEP's Code of Ethics and Standards of Practice for Environmental Professionals<sup>44</sup> are provisions to ensure the validity of data and guard against its misrepresentation.

There also appears to be a sense that all citizens of the earth as professionals and individuals bear individual moral obligations toward sustaining human life on earth and that these obligations need to be incorporated into codes of professional ethics.

In the 20 years since Boer's IBA address, it may be time to revisit the notion of an ethical duty to the environment. Does the knowledge that comes to the lawyer, via professional duties or otherwise, present any moral obligation? Such knowledge can include devastatingly serious information as to the location and spread of poisons that are certain (or likely) to lead to death or illness to specific, knowable **but non-client** humans. The knowledge can warn the lawyer of certain (or probable) destruction or harm to non-human life, as well as non-living entities (including entities both important or unimportant to human welfare). Is there a moral obligation to warn those responsible for preventing such harm? Does any moral obligation arise to avoid cruelty to animals – and, if so, which animals – horse, fish, worms, algae? Does any obligation exist in relation to living plant elements (moss, mould, viruses) or non-living identities (rocks, geological fissures, sub-terranean gases)?

Lawyers have a significant role in how society orders its relationship with the environment, through legislative drafting, advising clients on compliance, negotiating environmental outcomes and engaging in litigation that shapes the common law in forums for weighing up knowledge and arbitrating conflicting arguments. They are essential players in receiving and filtering important information as to the functioning and quality of segments of the environment and, for this reason alone, may face an increased need for more explicit ethical guidance, particularly where they may be acting for (and paid by) persons seeking to cause or acquiesce in such harm<sup>45</sup>. The day to day work of the environmental lawyer, if not most lawyers, is affected by the Earth Summits, Rio I<sup>46</sup> and Rio+20<sup>47</sup>,

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<sup>42</sup> Boer, 'Our Common Future; the Report of the World Commission on Environment and Development Implications for Environmental Law' paper delivered to the International Bar Association, 1989, 15-16, referred to in Bates, G, *Environmental Law in Australia*, Lexis Nexis Butterworths 2013.

<sup>43</sup> National Association of Environmental Professionals (NAEP), Code of Ethics and Standards of Practice for Environmental Professionals, <http://www.naep.org/code-of-ethics> accessed 27 November 2013

<sup>44</sup> Ibid.

<sup>45</sup> J. William Futrell, 1994, Environmental ethics, legal ethics, and codes of professional responsibility, *Ethics and Environmental Law* Vol 27:825

<sup>46</sup> Footnote 12

<sup>47</sup> Rio +20, United Nations Conference on Sustainable Development <http://www.uncsd2012.org/>

Kyoto Protocol<sup>48</sup>, principles of environmentally sustainable development, Environmental Impact Assessments, carbon trading schemes, Clean Energy Regulation and climate change debate.

The environment presents markedly different, but deeply moral dilemmas for the legal profession that invite, at minimum, reconsideration of legal professional ethical standards to reflect changed environmental values. A tentative set of questions that could be considered by ethics committees of State Law Societies and Bar Associations is Appendix I.

## ***CONCLUSIONS***

This paper reviewed broad philosophical ideas and ethical considerations noting the links between ethics and changing societal values. It suggests that environmental considerations now challenge notions of anthropocentrism within ethical thinking and blur the philosophical divide between ethics and epistemology. Within this context, the legal profession finds itself facing serious moral dilemmas the seriousness and importance of societies' response to the environment, and the element of the finite. Reconsideration of the legal profession's existing code of ethical practice to include a duty to the environment may now be warranted.

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<sup>48</sup> Kyoto Protocol To The United Nations Framework Convention On Climate Change, United Nations, 1998, <http://unfccc.int/resource/docs/convkp/kpeng.pdf> accessed 27 November 2013

## **APPENDIX I**

### **As a Profession**

- Should the profession be adopting an environmental ethic? If so, what does this mean for day to day legal practice given, existing duties to the client?
- How should lawyers balance their personal views of what *ought* to be with codes of practice as particularly where these clash?
- Does a lawyer (as professional) face separate obligations, “above and beyond” those of the ordinary citizen because of their proximity to the heart of serious environmental issues and their unique scope and extent of their knowledge?
- How exactly would lawyers take the environment into account?

### **As Employers**

- Young people employed in law firms are personally invested in the environment that sustains future life. Is the profession required to exercise its own intergenerational equity?
- Are environmental lawyers and their staff in the environmental law field being asked to overcome impossible odds? Do they owe a duty to themselves to protect themselves from excessive stress?
- Direction v Independence
- Client v personal ethical concerns

### **Theoretical**

- Is the environmental lawyer demonstrating a need to remove the divide between the epistemically and ethical conceptualisations needs?
- Is environmental ethics itself ideologically skewed?
- How should obligations that a specific group may have towards the environment, say a professional group, differ from obligations posed by environmental ethics for human beings, more generally?

### **As Teachers**

- Can and should an understanding of environmental ethics concretely inform a lawyer in choices?