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## Searching Through Storytelling

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## Searching Through Storytelling:

Adam Dodek & Alice Woolley, Eds, *In Search of The Ethical Lawyer: Stories from The Canadian Legal Profession* (Vancouver: Ubc Press, 2016)

Gerard J. Kennedy\*

“[I]f an ethical issue can be resolved by reference to a provision in the *Rules of Professional Conduct*, it is not worth discussing.”<sup>1</sup>

These only slightly tongue-in-cheek words from the introduction to Adam Dodek and Alice Woolley’s edited collection *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession*<sup>2</sup> could be reiterated throughout the eleven “stories” that make up this timely and readable book. The emphasis on stories is what makes *In Search of the Ethical Lawyer* such an important and welcome addition to Canadian legal scholarship.

The book’s title reveals a great deal. First and foremost, the eleven chapters “search” for the “Ethical Lawyer” – no one seems to have mastered the craft, as even the heroes (such as David Asper and Rocky Jones) struggle or make mistakes. Even the more villainous characters (such as Kenneth Murray) are sympathetic. The book truly is a “search” for the ethical lawyer and that search remains ongoing when the book ends. But the subtitle is equally important and even more descriptive – all eleven chapters are, at least to some degree, recounting “stories” from the Canadian legal profession. The eleven authors bring to life difficult abstract concepts not through essays, theory, or doctrinal review, but through storytelling. This methodology leads to an end product that is not only interesting and eminently readable, but illustrative of how legal ethics issues arise in practice. Like all edited collections, one can legitimately gripe about certain chapters not being fully in line with the structure, theme, methodology, and/or tone of the book. An Indigenous perspective is sorely lacking. Overall, however, Dodek and Woolley’s collection is a satisfying reading experience for anyone in the legal profession curious about “what we can do better”.

In the first section of this book review, I explain who may benefit from reading the book, before summarizing each chapter, and discussing the authors’ methodological choices. Given the nature of the book, this is by necessity a lengthy process. I follow this with a macro-level analysis of the methodological choices in the book as a whole. I then make some other small criticisms about the book’s structure before briefly concluding.

## I. AN OVERVIEW OF THE COLLECTION

American scholars such as Carrie Menkel-Meadow have emphasized the utility of using stories to illustrate principles of legal ethics for many years.<sup>3</sup> But this has remained relatively rare in Canadian legal

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<sup>1</sup> Adam Dodek & Alice Woolley, “Introduction” in Adam Dodek & Alice Woolley, eds, *In Search of the Ethical Lawyer: Stories from the Canadian Legal Profession* (Vancouver: UBC Press, 2016) 5 at 5.

<sup>2</sup> *Ibid.*

<sup>3</sup> “Telling Stories in School: Using Case Studies and Stories to Teach Legal Ethics” (2000), 69 *Fordham L Rev* 787.

scholarship. Dodek and Woolley's collection therefore fills an important void. Legal ethics scholars – and teachers – will find the book particularly valuable in terms of being exposed to new ideas on “how to teach” and how to potentially conduct further research. However, almost all practising lawyers could learn something valuable from the book, given how practical it is. And the entire book need not be read to appreciate its insights, given that it is organized so that busy practising lawyers could easily focus on the chapters or sections most relevant to them.

The first four chapters primarily concentrate on the unique ethical dilemmas arising in the criminal justice system. The first is written by Dodek himself.<sup>4</sup> With eloquence somewhere between legal scholar, long-form journalist and mystery-writer, Dodek recreates the famous 1999 Supreme Court saga of “*Smith v Jones*”.<sup>5</sup> Dodek makes us realize it is an extraordinary story in and of itself. Through an analysis of news articles, interviews with the lawyers involved, and a doctrinal analysis of the law of privilege, he recreates the atmosphere of the case as it was actually litigated. In hindsight, the case seems obviously decided – surely, a psychiatrist retained by a lawyer may disclose his opinion that an accused person is a serious danger to society. But Dodek explores nuances in such a way so that one has exceptional empathy for the players involved. In a nice touch, he ends by summarizing the current statuses of the major players, and recalls his own role as a young lawyer and aspiring scholar in the case's aftermath.<sup>6</sup>

Allan Hutchinson follows with an in-depth analysis of Kenneth Murray's infamous handling of the videotapes depicting Karla Homolka and Paul Bernardo raping and torturing Kristen French and Leslie Mahaffey.<sup>7</sup> Murray had followed Bernardo's instructions to take the tapes from Bernardo's house. While Murray was holding on to them (thus making the police unable to find them), the infamous “deal with the devil” was reached with Karla Holmolka, wherein she agreed to plead guilty to manslaughter in exchange for testifying against Bernardo. Hutchinson concludes that Murray acted inappropriately first and foremost by taking on a case in which he was not competent to act but second by retrieving the tapes from Bernardo's house.<sup>8</sup> But he also notes that around the edges of this infamous saga are many uncertainties. Given criminal defence lawyers' competing ethical and professional obligations, if Murray had acted even slightly differently, Hutchinson concludes his ethical shortcomings in handling the tapes would not have been clear.<sup>9</sup> Like most of the book's other contributing authors, Hutchinson recounts the facts of this case, supplemented by history not apparent from reported decisions. But somewhat uniquely in the volume, he also engages in extensive comparisons between the Murray/Bernardo saga and similar cases and ethical rules in other jurisdictions.<sup>10</sup> Like Dodek, he ends his piece by detailing the current locations of the players involved in the saga.<sup>11</sup>

The third chapter is in many ways the most personal as David Asper recounts his efforts to overturn David Milgaard's wrongful conviction.<sup>12</sup> In almost autobiographical format, Asper recounts his career

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<sup>4</sup> Adam Dodek, “Keeping Secrets or Saving Lives: What is a Lawyer to Do?” in Dodek & Woolley, *supra* note 1, 15.

<sup>5</sup> [1999] 1 SCR 455.

<sup>6</sup> Dodek, *supra* note 4 at 31-33.

<sup>7</sup> Allan Hutchinson “Putting Up a Defence: Sex, Lies and Videotape” in Dodek & Woolley, *supra* note 1, 40.

<sup>8</sup> *Ibid* at 50.

<sup>9</sup> *Ibid* at 50-52.

<sup>10</sup> *Ibid*.

<sup>11</sup> *Ibid* at 52-53.

<sup>12</sup> David Asper, “No One's Interested in Something You Didn't Do: Freeing David Milgaard the Ugly Way” in Dodek & Woolley, *supra* note 1, 55.

prior to meeting Joyce Milgaard.<sup>13</sup> Asper admits he was fairly convinced of Milgaard's guilt after reading the trial and appeal materials, and describes how he went about learning "what was missed".<sup>14</sup> Resisting demonizing the other side, he admits he does not believe that there was "intentional evil" from anyone involved and just as the Crown and police made mistakes, so did he.<sup>15</sup> Unlike many of his co-contributors, Asper does not write with the integration of other scholarship. However, the chapter is perhaps the only one in the volume that discusses the benefits – and dangers – that come with engaging with: a) the media; and b) the government exercising discretionary powers.<sup>16</sup>

The criminal law stories end with Richard Devlin's recounting the career of "Rocky" Jones, the prominent Black Nova Scotia lawyer and activist.<sup>17</sup> Devlin concentrates on three aspects of Jones's career: a) his role in establishing a program to increase the numbers of Mi'kmaq and Black students at the Faculty of Law at Dalhousie University; b) his defence of "R.D.S.", the accused in the famous *R v RDS* case<sup>18</sup>; and c) a saga in which he was sued for defamation by a Halifax police officer. He integrates Nova Scotia history throughout all three. He also explores how the seemingly narrow doctrinal legal issues at stake in many of Jones's cases were actually much more important. For example, *RDS* was a decision of the Supreme Court of Canada on the appropriate role and relevance of social context in judicial decision-making, and how judges can use their life experience in their judgments. Devlin, by explaining how the case actually went through the courts and recounting Jones's role in it, reminds us that it was really about "being a Black judge in Nova Scotia".<sup>19</sup> Devlin does not deify Jones and recognizes that he made several tactical mistakes in his career. But through history and case law, Devlin nonetheless explores how one man sought to reshape law and the legal profession to be more egalitarian – and succeeded to a notable degree.

Chapters Five and Six concentrate on gender and exclusion. In Chapter Five, Janine Benedet explores the paradoxes faced by feminist lawyers who are both "outsiders" and "insiders" in the legal system.<sup>20</sup> She does this through (auto)biographical studies of the careers of three women: Carole Curtis, Beth Symes, and Benedet herself. Curtis, now a judge on the Ontario Court of Justice, was the first Law Society of Upper Canada (LSUC) benchler that LSUC investigated for misconduct after being accused of encouraging a client to breach a court order. Though she was cleared, she suffered deeply, as did her reputation.<sup>21</sup> Symes is famous for her challenge over whether child care is a valid business expense under the *Income Tax Act* – and, if it is not, whether that violates the constitutional guarantee to equality.<sup>22</sup> Benedet recounts how Symes's challenge led to immense criticism that she was seeking to privilege older, wealthier, whiter,

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<sup>13</sup> *Ibid* at 58-60.

<sup>14</sup> *Ibid* at 62.

<sup>15</sup> *Ibid* at 57-58.

<sup>16</sup> *Ibid* at 65-67, 71-75.

<sup>17</sup> Richard F Devlin, "'Begun in Faith, Continued in Determination': Burnley Allan (Rocky) Jones and the Egalitarian Practice of Law" in Dodek & Woolley, *supra* note 1, 81.

<sup>18</sup> *R v S (RD)*, [1997] 3 SCR 484 [*RDS*].

<sup>19</sup> Devlin, *supra* note 17 at 92.

<sup>20</sup> Janine Benedet, "Feminist Lawyers: Insiders and Outsiders" in Dodek & Woolley, *supra* note 1, 111.

<sup>21</sup> *Ibid* at 117.

<sup>22</sup> *Symes v Canada*, [1993] 4 SCR 695.

privileged women.<sup>23</sup> Just as both Curtis and Symes have sought to use their privileged positions to advance the interests of less privileged women, Benedet ends by considering her own career as a feminist law professor and lawyer. She recognizes that being an insider and an outsider can be hard to reconcile.<sup>24</sup> But her mix of autobiography, biography (including an interview of Symes), history, and doctrinal analysis of the cases of Symes and Curtis explores the real ethical “pulls” that feminist lawyers feel. She ultimately sees no choice but to use her unique position as a lawyer and an academic to pursue justice for those less privileged than her, “bettering both the lives of women and the legal profession.”<sup>25</sup>

In Chapter Six,<sup>26</sup> Constance Backhouse, in her characteristically case-based historical fashion,<sup>27</sup> explores the notion of “professionalism” in a “history of a profession riddled with discrimination and inequality.”<sup>28</sup> Drawing on numerous historic examples, starting with 1820s requirements that Upper Canadian lawyers be able to read Cicero, Backhouse recounts how the concept of professionalism “is all about power and exclusion [...] inextricably linked historically to masculinity, whiteness, class privilege, and Protestantism.”<sup>29</sup> Some of her more stark historical examples include the facts that both Ontario’s first Black lawyer and first female lawyer had to have legislation passed to secure their admissions to the bar.<sup>30</sup> Trailblazing female members of the judiciary found similar impediments, even when their male colleagues expressed exactly the same views. A famous juxtaposition is seen in the comparative reactions to Judge Corinne Sparks of the Nova Scotia Family/Youth Court (the trial judge in *RDS*) and Justice David Doherty of the Ontario Court of Appeal recognizing systemic racism.<sup>31</sup> Judge Sparks was accused of being biased while Justice Doherty was praised for being enlightened. The historical examples Backhouse cites ultimately make the reader very cognizant of the problematic overtones that underlie the legal profession’s emphasis on “professionalism” as an alleged ethical virtue. Backhouse could be criticized for providing a greatest hits version of the legal profession’s low moments as opposed to a systemic historical analysis. But she anticipates this criticism, conceding that “the examples that I have produced in this chapter cannot capture the fullness of the historical record.”<sup>32</sup> As interesting, meticulously-researched, and powerful a chapter as Backhouse’s is, the reader does not feel as though the “search” for the ethical lawyer is closer to its conclusion when she concludes. Though we perhaps have a better idea of what the ethical lawyer is *not*.

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<sup>23</sup> Benedet, *supra* note 20 at 119-121. Rebecca Johnson analyzed this in depth in *Taxing Choices: The Intersection of Class, Gender, Parenthood, and the Law* (Vancouver: UBC Press, 2004).

<sup>24</sup> Benedet, *ibid.*, at 121-123.

<sup>25</sup> *Ibid* at 123.

<sup>26</sup> Constance Backhouse, “Gender and Race in the Construction of ‘Legal Professionalism’: Historical Perspectives” in Dodek & Woolley, *supra* note 1, 126 [Backhouse, “Gender and Race”].

<sup>27</sup> See e.g. Constance Backhouse, *Carnal Crimes: Sexual Assault Law in Canada, 1900-1975* (Toronto: The Osgoode Society for Canadian Legal History and Irwin Law, 2008); Constance Backhouse, *Colour Coded: A Legal History of Racism in Canada, 1900-1950* (Toronto: The Osgoode Society for Canadian Legal History and the University of Toronto Press, 1999).

<sup>28</sup> Backhouse, “Gender and Race”, *supra* note 26 at 127.

<sup>29</sup> *Ibid* at 128.

<sup>30</sup> *Ibid* at 130-133.

<sup>31</sup> *Ibid* at 136-137; *RDS*, *supra* note 18, analyzing Judge Sparks’s decision; but see *Peart v Peel Regional Police Services* (2006), 217 OAC 269 (CA) at para 94, per Doherty JA.

<sup>32</sup> *Ibid* at 140.

Chapters Seven and Eight look at access to justice. In Chapter Seven,<sup>33</sup> Lorne Sossin analyzes one of the most innovative *pro bono* projects in Canada – Pro Bono Law Ontario’s (PBLO) provision of services to families of children hospitalized at Toronto’s Hospital for Sick Children (PBLO at SickKids). Based on interviews with PBLO’s Lee Ann Chapman and many volunteer lawyers, as well as an analysis of cases handled by PBLO at SickKids, Sossin explains how the project seeks to train doctors, nurses, and social workers to identify cases that may require legal assistance. This legal assistance could include housing, immigration, employment, special education, social benefits, taxation, and/or getting sick children into schools with accommodation.<sup>34</sup> In all cases, the lawyers seek to help the children and their families deal with an underlying issue that has caused or exacerbated the child’s illness. Sossin’s recounting of tales of individuals helped by this service makes the reader realize what a worthwhile project it is. Some cases are handled by the PBLO staff lawyer but many are referred out to practising lawyers who take on the occasional *pro bono* case, and who find the cases very rewarding.<sup>35</sup>

Just as Backhouse tackles the issue of equality in a broader way than Benedet, Trevor Farrow looks at access to justice in a broader way than Sossin.<sup>36</sup> Farrow admits it is somewhat odd to be discussing this in a volume of Canadian legal ethics stories, “particularly one focussed primarily on individual lawyers, their cases, and their clients”.<sup>37</sup> In keeping with the storytelling nature of the book, however, Farrow first recounts *his* experience asking Canadians what they think about justice and access to it.<sup>38</sup> Second, he discusses the development and work of the Action Committee on Access to Justice in Civil and Family Matters. Based on his work on and off the Action Committee, Farrow defends a broad view of access to justice, with the emphasis on the user as opposed to the system.<sup>39</sup> Near the end, Farrow focuses on how and why “access to justice must become a central element of legal professionalism”<sup>40</sup> and how the law societies can facilitate a culture shift in moving lawyers’ emphasis from the system to the user. Farrow’s research is largely based on statistical analysis of interviews he conducted. He makes incredibly important and valuable contributions regarding access to justice, particularly in the need to see problems from the perspective of clients, and contemplating a shift in focus from process to outcome. He appeals to the need for innovations, noting “if lawyers fail to take up this challenge, then alternative forms of assistance will likely develop”.<sup>41</sup> Farrow’s emphasis on ethics and professionalism is different and unique in the context of the book, as is his methodology. I return to this below.

The last three chapters concentrate on three individuals’ unique and very different experiences in legal careers. Alice Woolley’s “Michelle’s Story: Creativity and Meaning in Legal Practice”<sup>42</sup> focuses on the

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<sup>33</sup> Lorne Sossin, “The Helping Profession: Can *Pro Bono* Lawyers Make Sick Children Well?” in Dodek & Woolley, *supra* note 1 at 150.

<sup>34</sup> *Ibid* at 153.

<sup>35</sup> *Ibid* at 154-155.

<sup>36</sup> Trevor CW Farrow, “A New Wave of Access to Justice Reform in Canada” in Dodek & Woolley, *supra* note 1, 164 [Farrow, “New Wave”].

<sup>37</sup> *Ibid*.

<sup>38</sup> *Ibid* at 165-167; published in Trevor CW Farrow, “What is Access to Justice?” (Spring, 2014) 51:3 Osgoode Hall LJ 957 [Farrow, “Access to Justice”].

<sup>39</sup> Farrow, “New Wave”, *supra* note 36 at 170.

<sup>40</sup> *Ibid* at 178.

<sup>41</sup> *Ibid* at 179.

<sup>42</sup> In Dodek & Woolley, *supra* note 1, 186.

“meaning” of the identity of “lawyer” for individual lawyers. She tells the story of “Michelle” (whose surname is never revealed). Michelle is alluded to early on as someone who involuntarily lost her identity as a lawyer. Woolley slowly gives the details of Michelle’s life as a politically-oriented aspiring lawyer overcoming challenges to build a rewarding employment law practice. This is followed by the slow explanation to the reader – mirrored by the slow realization on the part of Michelle – that a devastating medical diagnosis will rob Michelle of her legal career. Woolley asks the reader to reflect on what it means to be a(n ethical) lawyer as “being a lawyer can mean a great deal, that when it is taken away it can break your heart”.<sup>43</sup>

Chapter Ten brings us from the anonymous “Michelle” to the very famous Ian Scott as Brent Cotter recounts the career of the former Attorney General of Ontario.<sup>44</sup> Cotter’s piece fits into the volume perfectly in recounting Scott’s life story. The scion of a famous Irish Catholic Ottawa family, Scott moved to Toronto where his homosexuality would be more accepted, becoming a leading member of the bar and finally a reform-minded Attorney General. Cotter’s recount of history emphasizes Scott’s ethics being particularly notable given that he reduced his own power as Attorney-General, regarding judicial appointments and the elimination of the “QC” designation.<sup>45</sup> This is something few politicians do – but Scott did so to uphold the rule of law.

Finally, in Chapter Eleven, Micah Rankin recounts the tale of Gerry Laarakker, a British Columbia lawyer sanctioned by the Law Society of British Columbia (LSBC) for writing an uncivil letter in response to a demand letter sent to his client by a major retailer. The demand letter claimed, almost certainly illegitimately, that the client owed the retailer \$500 due to the client’s daughter allegedly shoplifting from the retailer.<sup>46</sup> Rankin concedes that Laarakker’s letter exemplified poor etiquette.<sup>47</sup> But he seeks to place Laarakker’s alleged wrongdoing in the broader context of an ethical debate about lawyers’ duties to represent their clients zealously – and the duty of lawyers not to bring or threaten frivolous lawsuits (with such a threat prompting Laarakker’s impugned letter). Rankin concludes that Laarakker, despite being found guilty of professional misconduct, could fairly be said to have been acting to uphold the ideals of the legal profession.<sup>48</sup> The Supreme Court will soon grapple with similar issues when it decides the fate of Joseph Groia.<sup>49</sup>

## II. DIVERSE METHODOLOGIES

The book’s integration of different methodologies is perhaps the most striking thing about it. The *New Shorter Oxford English Dictionary* defines “methodology” as “a body of methods used in a particular

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<sup>43</sup> *Ibid* at 200.

<sup>44</sup> W Brent Cotter, “Ian Scott: Renaissance Man, Consummate Advocate, Attorney General Extraordinaire” in Dodek & Woolley, *supra* note 1 at 202.

<sup>45</sup> *Ibid* at 215-216.

<sup>46</sup> Micah Rankin, “Gerry Laarakker: From Rustic Rambo to Rebel with a Cause” in Dodek & Woolley, *supra* note 1, 225.

<sup>47</sup> *Ibid* at 226.

<sup>48</sup> *Ibid* at 239-240.

<sup>49</sup> *Groia v The Law Society of Upper Canada*, 2016 ONCA 471, 131 OR (3d) 1, leave to appeal granted, 2017 CanLII 4181.

branch of study or activity.”<sup>50</sup> Dominating the book is the methodology of storytelling. As summarized by Hadley Friedland, stories:

have a unique ability to create new insights, communicate experiences and life predicaments within a particular culture, relay emotive content effectively, facilitate moral reasoning, justify “principled decisions and opinions,” and change people's views.<sup>51</sup>

The power of stories has been recognized in the United States as an effective way to study and teach legal ethics.<sup>52</sup> One of the book's most interesting elements is its use of different but complementary methods in bringing together different “stories”.

Within the methodology of storytelling, many different methods are apparent. Legal history methods, analyzing historical records and the time periods during which the stories take place, are most common within the book. The contributions of Devlin and especially Backhouse are in many ways the most “classically” historic, delving into historical records, beyond case law and legislation to bring in broader social trends and the historic circumstances. This is characteristic of legal history.<sup>53</sup> But Backhouse and Devlin are not alone – Dodek, Hutchinson, Asper, Benedet, Woolley, Cotter, and Rankin also make sure that they are recounting historical details about the cases and individuals they discuss, usually over years if not decades. They admittedly choose very different sources. This is not distracting, however, as there is no universally accepted canon of sources of legal history.<sup>54</sup>

Many of the pieces could be construed as “legal biography”, a term that is difficult to define but seems to seek to understand law through the lives of particular individuals.<sup>55</sup> Whether legal biography is truly a different beast than legal history is unclear. The Osgoode Society for Canadian Legal History does not make appear to make a distinction. Moreover, the status of “legal biography” as a type of truly “legal” scholarship has been criticized, despite its ability to help us understand legal phenomena.<sup>56</sup> But as Eric Adams has noted, the line between “legal archaeology, case in context, or, simply, legal history” can be blurred.<sup>57</sup> And in the context of this book, the boundaries between these disciplines frankly do not matter, as the book's blend of biography, cases, and history comes together in a primary approach of storytelling in search of the idea, or ideal, of the ethical lawyer.

Legal ethics is a field for which storytelling is a particularly appropriate type of scholarship. As noted at the outset, traditional “doctrine” (e.g., the *Rules of Professional Conduct*<sup>58</sup>) is of limited use when discussing ethics. Stories play an essential role in allowing us to comprehend the broad, and usually very vague, principles behind legal ethics.<sup>59</sup>

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<sup>50</sup> *The New Shorter Oxford English Dictionary*, 3d ed (Oxford: Clarendon Press, 1993).

<sup>51</sup> Hadley Friedland, “Waniskā: Reimagining the Future with Indigenous Legal Traditions” (2007) 33 Windsor YB Access to Just 85 at 88-89.

<sup>52</sup> Menkel-Meadow, *supra* note 3.

<sup>53</sup> See e.g. Philip Girard, “Who's Afraid of Canadian Legal History?” (2007) 57 U Toronto LJ 727, recounting the history of Canadian legal history, and reflecting on its future.

<sup>54</sup> See e.g. Mark D Walters, “Book Review: *White Man's Law: Native People in Nineteenth Century Canadian Jurisprudence* by Sidney L Haring” (Spring 2000) 25 Queen's LJ 719 at 719-720.

<sup>55</sup> R Gwynedd Parry, “Is Legal Biography Really Legal Scholarship?” (June 2010) 30:2 LS 208.

<sup>56</sup> *Ibid.*

<sup>57</sup> Eric M Adams, “Errors of Fact and Law: Race, Space, and Hockey in *Christie v York*” (Fall, 2012) 62 UTLJ 463 at 467.

<sup>58</sup> See e.g. *Rules of Professional Conduct*, LSUC, 2015.

<sup>59</sup> Friedland, *supra* note 51 at 89.



The emphasis on storytelling does not exclude legal doctrine. Indeed, virtually all chapters also include “classic” legal doctrine insofar as they seek to make sense of lawyers’ professional legal obligations. To the extent necessary, they also include discussion of substantive law and the ethical obligations that it creates. Dodek’s chapter might be the most obvious in this regard, as he explores the law of privilege and how it relates to the *Smith v Jones* saga. Rankin considers when parents are liable for torts committed by their children, partially to defend Mr. Laarakker’s actions.<sup>60</sup> As Hutchinson recounts the prosecution of Kenneth Murray, he not only tells the story, but also analyzes the decision of *R v Murray*, one of the leading reported decisions concerning legal ethics in Canada.<sup>61</sup> In all of these pieces, history and doctrine come together naturally through storytelling.

Interviews are another methodology found in the book. Dodek, Benedet, Sossin, and Rankin all interview individuals important to their chapters. This is effective, insofar as it complements the storytelling and historical narrative. The interviews are fundamentally complementary to the more primary historical and/or doctrinal methods. This is highly effective. Even Woolley’s “Michelle’s Story”, which was clearly heavily based on Woolley interviewing her subject, reads as a biography rather than a piece that is the product of interviews. Farrow’s use of interviews is quite different and I return to it below.

### III. CRITICAL LENSES

Feminism is central to the chapters by Benedet and Backhouse. It also makes an important appearance in Woolley’s contribution.<sup>62</sup> Critical race theory is key to Backhouse’s piece, as well as Devlin’s. Backhouse and Benedet note at length the barriers women have faced and continue to face in becoming substantively equal members of the legal professions, though historic and modern examples. Backhouse provides an equally compelling history of the profession’s racial exclusions, while Devlin recounts modern attempts to counteract that. In a book searching for the ethical lawyer in Canada in 2016, it was very important to incorporate these perspectives.

Despite the inclusion of feminist and critical race perspectives, I was disappointed that there were no Indigenous perspectives. This disappointment is heightened given that the book’s primary methodology is storytelling, which is particularly important in Indigenous legal traditions.<sup>63</sup> Apart from relatively brief mentions in Devlin’s and Backhouse’s pieces, the book has no real discussion of historical injustices experienced by Indigenous Canadians, and the law’s role in these injustices. In 2016, a year where reconciliation was repeatedly emphasized in legal decisions<sup>64</sup> and legal scholarship,<sup>65</sup> this is unfortunate.

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<sup>60</sup> Rankin, *supra* note 46 at 236-238.

<sup>61</sup> Hutchinson, *supra* note 7 at 47-48, citing *R v Murray* (2000), 48 OR (3d) 544 (SCJ).

<sup>62</sup> See e.g. Woolley, *supra* note 42 at 193.

<sup>63</sup> Friedland, *supra* note 51.

<sup>64</sup> See e.g. *Daniels v Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 SCR 99 at para 37.

<sup>65</sup> Seen most starkly in the June 2016 edition of the *McGill Law Journal*, summarized by Fraser Harland in “Introduction: Moving from the Why to the How of Indigenous Law” (June 2016) 61:4 McGill LJ 721.

#### IV. A COHERENT WHOLE?

Almost all edited collections have some difficulty in forming a coherent whole.<sup>66</sup> But *In Search of the Ethical Lawyer* comes very close despite the very different methodologies present in it. Almost all of the chapters tell a “story” or “stories” of individuals, cases, or, in the case of Sossin’s and Farrow’s pieces, projects. This “storytelling” approach to a diverse set of ethical issues raised by the pieces makes them come together overall as a genuine “search”.

This is not to say the book is flawless. In the first two chapters, Dodek and Hutchinson end their chapters by summarizing the fates and current locations of the individuals involved in their stories. I grew to expect this and was disappointed when later authors did not follow suit.<sup>67</sup> But this is a minor complaint. All chapters are of course different. Woolley’s take on Michelle stands out as concentrating less on ethics and legal practice. But it still fits in as a very personal “story”. Farrow’s chapter, however, does not flow as naturally. Though a very fine piece of scholarship in its own right,<sup>68</sup> it does not have quite the feel of “storytelling” that the others do. The project that he describes lacks the tales of individuals and cases found in the other chapters. When one is reading the book through cover-to-cover, the chapter therefore seems a bit out of place. This is unfortunate, because it is an exceptional summary of the crisis of access to justice, and the need to conceive of broad solutions for it, specifically in terms of how lawyers deliver services. As alluded to above, Farrow uses interviews (or summaries of them, or recounting how he worked to analyze them) as his primary research methodology. This is a fine methodology in and of itself – it is one of the reasons his piece “What is Access to Justice?”<sup>69</sup> is so effective. But in the context of the volume as a whole, it does not flow naturally. Perhaps the chapter’s lack of intimacy or concentration on particular individuals reflects the nature of the access to justice crisis, a crisis that affects so many individuals that it does not always feel like an acute problem.<sup>70</sup>

By and large, however, the authors do not overreach, or purport to be showing more than their stories can legitimately show. Backhouse acknowledges that she is not attempting to exhaust history,<sup>71</sup> and Farrow admits his storytelling approach is unusual in this volume of stories.<sup>72</sup> This prevents one from griping too much with their specific choices.

<sup>66</sup> See e.g. Ross F Buckley, “Stability of the Financial System: Illusion or Feasible Concept?” in Andreas Dombret & Otto Lucius, eds, (Cheltenham, UK: Edward Elgar, 2013) 576 pp. US\$191.00 and *The Bankers’ New Clothes: What’s Wrong with Banking and What to Do about It* Anat Admati & Martin Hellwig (Princeton, NJ: Princeton University Press, 2013) 416 pp. US\$18.95” (November 2014) 30 BFLR 175 (WL) at 176.

<sup>67</sup> Rodney Small, “R.D.S.” himself, recently gave an interview to the CBC about his story and the importance of the Supreme Court’s decision and Rocky Jones’s representation of him: Alex Mason, “How a landmark case heard 20 years ago today shaped a black teen at the centre of it” CBC News (10 March 2017), online: <<http://www.cbc.ca/news/canada/nova-scotia/rodney-small-landmark-case-1.4015878>>.

<sup>68</sup> From a personal perspective, it has been incredibly useful in my doctoral studies.

<sup>69</sup> Farrow, “Access to Justice”, *supra* note 38.

<sup>70</sup> Psychologists have observed that the more widespread and/or “faceless” a problem is, the less it may resonate with individuals, even if its effects are profound: see e.g. Paul Bloom, *Against Empathy: The Case for Rational Compassion* (New York: HarperCollins, 2016) at 89-94, who overviews this phenomenon.

<sup>71</sup> Backhouse, “Gender and Race”, *supra* note 26 at 140.

<sup>72</sup> Farrow, “New Wave”, *supra* note 36 at 164-165.

## V. AN IMPORTANT CONTRIBUTION

Atticus Finch is probably the most celebrated ethical (and, unsurprisingly, fictional) lawyer in the English-speaking world. But even he is taught a valuable lesson of the costs of adhering too closely to the letter of the law at the end of *To Kill a Mockingbird*.<sup>73</sup> Through the eleven chapters “searching” for the ethical lawyer in *In Search of the Ethical Lawyer*, no one approaches Atticus Finch’s virtues – Rocky Jones and Ian Scott likely come closest, though people like Beth Symes and Carole Curtis are reminiscent of Finch in using their privileged positions to seek to advance the statuses of the less privileged. But nor does anyone come off as truly villainous. The result is a balanced portrayal of the various difficult ethical problems that lawyers have encountered – and are likely to continue to encounter – in Canada.

Around the edges, one can gripe about particular methodological choices, whether in the context of the individual chapters or the book as a whole. The omission of Indigenous perspectives is disappointing. Overall, however, the mix of history, (auto)biography, doctrinal analysis, and interviews all lead to a sense of *storytelling*. The result is an extremely readable, thought-provoking, and timely piece that both searches for the ethical lawyer, and provides many great stories from the legal profession. In other words, the book fulfils its goal of bringing people to think about ethics more deeply.

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<sup>73</sup> Thomas L Schaffer, “The Moral Theology of Atticus Finch” (1981) 42 U Pitt L Rev 181 at 192ff.