

# Book Review: Lawyers Gone Bad: Money, Sex and Madness in Canada's Legal Profession, by Philip Stayton

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## Book Review

### LAWYERS GONE BAD: MONEY, SEX AND MADNESS IN CANADA'S LEGAL PROFESSION, by Philip Slayton<sup>1</sup>

LORRAINE LAFFERTY<sup>2</sup>

DID PHILIP SLAYTON intend the brouhaha that accompanied the release of his book in the summer of 2007? Controversy does sell books, after all. In the world of fiction, Dan Brown's controversial book, *The Da Vinci Code*,<sup>3</sup> created a commotion and became a phenomenal bestseller. Of course, there are more differences than similarities between *The Da Vinci Code* and *Lawyers Gone Bad*. First and foremost, Slayton's book is not fiction. The stories of the twenty or so dishonest and unethical lawyers that dominate fourteen of the sixteen chapters of this book are factual. And perhaps it was not Slayton's book itself that generated so much furor, but rather the exclusive interview he gave to *Maclean's* magazine following the book's release.<sup>4</sup> The magazine catapulted this interview to its cover, proclaiming "Lawyers are rats" and using provocative language and images to portray corruption in the legal profession. *Maclean's* shrewdly touted Slayton, a former law professor and Bay Street lawyer, as an insider well placed to write an exposé of the legal profession. Such covers sell magazines, if not books. *The Da Vinci Code* challenged fundamental Christian beliefs and was criticized by various established Christian communities, notably the Catholic Church. The *Maclean's* interview challenged fundamental values of the legal profession—integrity, honesty, and self-governance—and was accordingly

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1. (Toronto: Viking Canada, 2007) 320 pages [*Lawyers Gone Bad*].

2. Member of Nova Scotia Bar, LL.B. (Dalhousie), LL.M. (Dalhousie) and Assistant Professor, Dalhousie Law School, Dalhousie University.

3. (New York: Doubleday, 2003).

4. Interview of Philip Slayton by Kate Fillion (26 July 2007) in *Maclean's* 120:30 (6 August 2007) 18.

criticized by established members of the legal profession, notably the presidents of the Canadian Bar Association<sup>5</sup> and the Ontario Bar Association.<sup>6</sup>

The lawyers Slayton writes about in his book were found ethically wanting by their respective provincial law societies; in most cases, they were also convicted of criminal offences and ultimately disbarred. They are men and women who were senior and junior at the bar, average students and gold medalists in law school, sole practitioners and partners in large law firms, and practitioners in differing areas of law (including tax, immigration, real estate conveyancing, and criminal defence) on Bay Street and in small towns, in British Columbia, Nova Scotia, and provinces in between. Brown's main character in *The Da Vinci Code* is a professor and erstwhile detective; likewise, Slayton, the former professor, has done his share of sleuthing to put together the stories of these errant lawyers. His sources of information—which included interviews with the lawyers themselves (where possible), interviews with former associates and family members, newspaper accounts, courtroom transcripts, and judgments of trial and appellate courts—disclose a dedicated degree of investigative diligence.

There is no unifying feature or characteristic of these lawyers “gone bad.” If Slayton is searching to understand what makes lawyers “go bad,” he finds no single answer. He puts forward a variety of answers depending on the individual lawyer studied, from a desire to appear important, to carelessness, poor judgment, arrogance, and unhappiness to inexplicable “madness.” Over ten years ago, in the article “The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?”, Harry Arthurs also concluded that personal characteristics are a significant factor in relation to who among lawyers is likely to misbehave.<sup>7</sup> Arthurs observed at the time that there are four reasons law societies usually mete out serious discipline: criminal offences (*i.e.*, theft, fraud, or forgery); breach of fiduciary duty; physical or mental disability or serious addiction; and failing to respond to the governing body. Slayton's lawyer stories

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5. Canadian Bar Association, News Release, “CBA condemns unfair characterization of lawyers in Maclean's magazine” (26 July 2007), online <[http://www.cba.org/CBA/News/2007\\_Releases/2007-07-26\\_macleans.aspx](http://www.cba.org/CBA/News/2007_Releases/2007-07-26_macleans.aspx)>.

6. James Morton, “An inexcusable smear on lawyers” *National Post* (30 July 2007) A11.

7. H.W. Arthurs, “The Dead Parrot: Does Professional Self-Regulation Exhibit Vital Signs?” (1995) 33 *Alta. L. Rev.* 800.

fall within and illustrate all of these categories. One might say the stories “parrot” the earlier observations of Arthurs—Arthurs was “dead” on.

These stories of unethical lawyers who have fallen from grace will likely appeal to the general public. The appeal of such stories, as Slayton acknowledges, is partly their ability to confirm the biases of popular culture: in this case, the belief that lawyers are dishonest, dishonourable scoundrels not unlike those epitomized in cartoons and lawyer jokes. The narrative style of the book surely suggests that the general public is its intended audience. The fastidious details Slayton reports, such as who ordered what from which particular restaurant and who wore cowboy boots, may fascinate the general public. But this level of inconsequential detail is less likely to hold the interest and attention of the ninety thousand Canadian lawyers<sup>8</sup> who, as Slayton admits, usually “behave honourably, serving their clients, profession, and community well.”<sup>9</sup> For these lawyers, it is questionable whether the personal histories of Slayton’s lawyers “gone bad” are reflective of their own circumstances in the practice of law. True, the long hours of practice and the need to bill can be burdensome, and yes, the work is at times mundane. But obviously, relative to numbers in the profession, these conditions by themselves rarely lead to criminality and disgrace.

That said, lawyers who do take the time to read the book, perhaps intrigued by the title and the publicity, may identify with the general observations of the legal profession described in the introductory and concluding chapters of the book. The intervening chapters are also punctuated with commentary on the profession that will be all too familiar to lawyers in practice. Slayton poses some tough questions for introspection about self-policing of the profession: for example, are law societies dealing appropriately and expeditiously with complaints against lawyers? Are lawyers suspended when they should be disbarred? The stories then suggest that the answers are all “no.” Take the *Finney* case,<sup>10</sup> where the Quebec Bar Association seriously failed to exercise its supervisory authority to protect a member of the public from an

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8. According to *Lawyers Gone Bad*, the legal profession in Canada has over ninety thousand members. *Lawyers Gone Bad*, *supra* note 1 at 1.

9. *Ibid.* at 1.

10. *Finney v. Barreau du Quebec*, [2004] 2 S.C.R. 17.

iniquitous lawyer in spite of the client's repeated complaints.<sup>11</sup> Slayton writes about lawyers who have been subject to disciplinary sanctions by their professional societies multiple times before ultimate disbarment.<sup>12</sup> Are these examples unrepresentative and isolated cases of regulatory deficiencies or do they represent pressing issues in serious need of attention? Based on the few stories provided, it is difficult to say whether the issues are pressing. The *questions*, however, are valid and deserve answers. One might ask what provincial law societies have done, individually and collectively, to gather and analyze data in order to provide answers to these questions. Under attack from Slayton, law societies may be moved to initiate procedures (if they do not already have them) to scrutinize the effectiveness of their processes, thereby making it possible to respond substantively to these tough questions.

Viewing the landscape of the legal profession from an observer's perch, Slayton sees a number of lawyers "gone bad" and is convinced that the regulatory system in the legal profession is in need of reform: His primary objection is to self-policing, not self-regulation, although a distinction is not clearly drawn in the book. Self-regulation is broader than self-policing. It encompasses more than complaints and discipline. It covers establishing qualifications for admission to the profession, setting standards of practice and standards of professional conduct, and providing opportunities for continuing legal education. The disciplinary "policing" process is one part, albeit a significant part, of self-regulation. Slayton's point is that lawyers do not do a good job of policing themselves. Allowed to investigate, prosecute, and pass judgment, they are slow to act on complaints against their members and are not tough enough on members when they do act. Assuming—based on Slayton's stories—that these generalizations are justified, what should be done?

Slayton advocates adopting reforms similar to those proposed in Britain by the 2004 Clementi Report.<sup>13</sup> This Report recommended, among other things, that a new independent office be created to investigate complaints against

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11. *Lawyers Gone Bad*, *supra* note 1, c. 14.

12. See discussions of Reeves Matheson, *ibid.*, c. 10; and Eric Belhassen, *ibid.*, c. 14.

13. UK, Department of Constitutional Affairs, *Review of the Regulatory Framework for Legal Services in England and Wales* by Sir David Clementi (London: Ministry of Justice, 2004), online: <<http://www.legal-services-review.org.uk/content/pubs.htm>> [Clementi Report]. See *Lawyers Gone Bad*, *supra* note 1 at 239.

lawyers,<sup>14</sup> and that a legal services board be created to have oversight of legal regulators.<sup>15</sup> The Clementi Report formed the basis for the *Legal Services Act*<sup>16</sup> which—subsequent to the release of the book—has received Royal Assent. The *Act* establishes both an Office for Legal Complaints<sup>17</sup> and a Legal Services Board.<sup>18</sup> Obviously, it is too soon to evaluate the effectiveness of these new bodies. The *Act* itself may not be a template for the Canadian context given our constitutional makeup, under which lawyers are governed on a provincial basis, and also given the unified bar, unlike the division in Britain between barristers and solicitors. Slayton asserts that the Office for Legal Complaints proposed by Clementi is similar to the “highly successful Office of the Legal Services Commissioner in New South Wales.”<sup>19</sup> Unfortunately, there is no accompanying elaboration on who has deemed the Australian Office a success and how the success of the Office is measured, nor is there any comparative “before” and “after” information on which to make an informed evaluation of that claim. The concept of an independent office of complaints may be valid, but absent supporting information, the proposal is not likely to convince the establishment that the change is necessary or would be worthwhile.

Slayton mentions in passing another recommendation of the Clementi Report,<sup>20</sup> also adopted in the UK *Legal Services Act*,<sup>21</sup> which permits non-lawyers to own and manage legal offices.<sup>22</sup> Under the so-called Alternate Business Structures provisions of the *Act*, it is possible that companies like retail stores (or banks or supermarkets) will open offices providing legal services to the public at very competitive prices. The positive effect of this may be to bring down the cost of legal services. This would be a desirable result but, realistically, the services provided will probably be limited to routine legal work such as

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14. Clementi Report, *ibid.*, c. C at para. 37.

15. Clementi Report, *ibid.*, c. B at paras. 70-71.

16. UK, 2007, c. 29, online: Office of Public Sector Information <[http://www.opsi.gov.uk/acts/acts2007/ukpga\\_20070029\\_en\\_1](http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1)> [“UK *Legal Services Act*” or “the *Act*”].

17. *Ibid.*, s. 114 and Sch. 15.

18. *Ibid.*, Part 2.

19. *Lawyers Gone Bad*, *supra* note 1 at 15.

20. Clementi Report, *supra* note 15, c. F.

21. UK *Legal Services Act*, *supra* note 18, Part 5.

22. *Lawyers Gone Bad*, *supra* note 1 at 239.

company incorporations, real estate transactions, and other work that can be easily systematized, rather than criminal law, family law, or complex civil matters. There is a pressing need to alleviate some of the difficulties faced by the increasing number of people who cannot afford legal services. Slayton is pessimistic that present members of the legal profession have any interest in solving access to justice issues.<sup>23</sup> He extends this pessimism as well to future members of the profession, those who are today's law students.<sup>24</sup> A large contingent of current law students is, however, engaged in voluntary pro bono work,<sup>25</sup> and a number of laws firms are supporting pro bono initiatives in their respective provinces where pro bono associations exist. From his days as a law professor, Slayton remembers that his students were not exposed to ethics and the responsibilities of being a member of the profession.<sup>26</sup> There, too, changes have been made. Professional responsibility courses are now mandatory at a number of Canadian law schools and other law schools are being encouraged to do likewise.<sup>27</sup>

Certainly in the short term *Lawyers Gone Bad* created a commotion, putting a spotlight on the legal profession as Slayton no doubt intended. It is far less certain whether in the long term the book will be remembered more for the regulatory changes which it advocates than for the controversy accompanying its release.

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23. *Ibid.* at 234.

24. *Ibid.* at 235.

25. Many schools staff one or more community legal clinics, for example: Law Students' Legal Advice Program, LSLAP (University of British Columbia), online: <<http://www.lslap.bc.ca/>>; Student Legal Services of Edmonton, SLS (University of Alberta), online: <<http://www.slsedmonton.com/>>; Community Legal Assistance Services for Saskatoon Inner City Inc., CLASSIC (University of Saskatchewan), online: <<http://www.classiclaw.ca/>>; Community and Legal Aid Services Programme, CLASP (Osgoode Hall Law School), online: <<http://www.osgoode.yorku.ca/clasp/>>; Downtown Legal Services, DLS (University of Toronto), online: <<http://www.dls.utoronto.ca/>>; McGill Legal Information Clinic, MLIC (McGill University), online: <<http://mlic.mcgill.ca/>>; and Dalhousie Legal Aid Service, online: <<http://law.dal.ca/Institutes/Dalhousie%20Legal%20Aid%20Service>>. Several schools have more subject-specific clinical pro bono programs, like the Innocence Projects at Osgoode Hall Law School, McGill University, and the University of British Columbia. Apart from school-specific initiatives, the organization Pro Bono Students Canada has active chapters in every Canadian law school, online: <<http://www.probonostudents.ca/>>.

26. *Lawyers Gone Bad*, *supra* note 1 at 2.

27. See Richard Devlin, Jocelyn Downie & Stephanie Lane, "Taking Responsibility: Mandatory Legal Ethics in Canadian Law Schools" (2007) 65:6 *The Advocate* 761.