

BOOK REVIEW

WHY GOOD LAWYERS MATTER

EDITED BY D L BLAIKIE, T A CROMWELL AND D PINK

Irwin Law, Toronto, 2012

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LEGAL AID LAWYERS AND THE QUEST FOR JUSTICE

BY DANIEL NEWMAN

Hart Publishing, Oxford, 2013

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In one scene of the much acclaimed movie *And Justice for All*, Al Pacino, an idealistic and highly competent lawyer caught in a vise of judicial wrongdoing, violently confronts a fellow lawyer who has failed to discharge his duty to their joint client. This failure has resulted in a major sentence that was thought unwarranted and that led the despairing client to commit suicide the same day. Pacino's question was highly significant, if not of signal value to the members of our profession: 'Don't you care?' To his shame and discredit, the other lawyer made plain that he did not concern himself in the least with the accused:

* Ontario Court of Justice.

a guilty person's situation was no better than a 'garbage case', not worthy of his skill and devotion.

I thought constantly of this scene as I read *Why Good Lawyers Matter*, edited by a member of the Supreme Court of Canada, Justice Cromwell, Professor Blaikie of Dalhousie Law School and Mr Pink, of the Nova Scotia Bar. Starting with the insightful foreword, 'The Lawyer: A Material Witness' by Professor G E Clarke, and ending with the inspiring contribution by the Honourable S T Goudge, formerly of the Ontario Court of Appeal, 'Guiding Lawyers To Be the Best They Can Be: The Fundamental Ideals of the Legal Profession', the essays are well-written, superbly documented and thought-provoking. The general theme of this book is of vital interest to all lawyers and I suggest that the lasting contribution of the essays will be the oft-repeated message that ethical practice requires, amongst other things, that members of the Bar strive towards, and achieve, that excellence of knowledge and skill that permit the discharge of our duties to our clients, the Courts and society in general. As ably expressed by Professors J Downie and R Devlin,

A great Canadian [read Australian, British, American, etc] will have knowledge and critical understanding of the core legal concepts (of the legal system) and ... common and emerging legal issues relevant to one's area of practice and ... *the current legal literature and classic books, articles, and book chapters relevant to one's area(s) of practice.*

I have italicised the words above in order to make plain that the authors insist on the stark reality that when one is struggling to achieve satisfactory results despite a lack of study and ongoing professional development, one is apt to take ethical shortcuts to cover mistakes. This is quite apart from outright deception and lies told in order to hide missed limitation periods or to explain the failure to plead required matters. It is also quite apart from the use of contrived explanations to clients in order to explain judicial rebukes, or of mendacity in discussing adverse rulings. On this theme, I commend Chapter 3, 'Lawyer or Liar? Breaking Down Public Perception', by Professor S G A Pitel.¹

Indeed, how may a lawyer achieve serenity when continuously confronted by stress and anxiety attributable to inadequate understanding of the law?

The other quite major advantage in reading this relatively short text of 214 pages is grounded in the excellence of the personal insights advanced by

¹ D L Blaikie, T A Cromwell and D Pink (eds), *Why Good Lawyers Matter* (Irwin Law, 2012) 43–55.

practitioners, members of the judiciary and academics on the subject of quality of life after admission to the Bar.

I recommend in particular the first chapter, 'Better ... or worse? The Satisfactions and Frustrations of the Lawyer-Client Relationship' by Daphne Dumont QC, a highly experienced advocate practising in Canada's smallest province. Her thoughts are anchored in the fascinating reality that real estate conveyancing generates no greater fees than it did a generation ago, but requires a great deal of work that was unimaginable at the time. For example, there has been a concomitant increase in 'challenges' to lawyers by dissatisfied clients baulking at the costs associated with water quality testing and related environmental concerns, to name but one modern requirement of good title.

Ms Dumont's grace under pressure and her precise writing let the reader seemingly hear her calm explanations and understand the bedrock importance of communicating fully with clients from the outset of the professional relationship. The precision of her writing enhances the value of her sound insights into the work-life balance, a balance which must be achieved without neglecting the absolute necessity of applying oneself to continuing study.

The volume also contains Justice Patrick Healy's sound exposition of what makes lawyers good, average or bad,² notably in his concluding thoughts on the necessity of developing one's level of skill.

Furthermore, Ms Melina Buckley reminds us in the course of an excellent essay, 'Lawyers, Snails, and Bottles: The Creeping Pace of Change in the Law',³ of the wonderful contribution of counsel who are prepared to argue for improvements in the law based on a careful study of precedents and the evolving needs of the community. The essay demonstrates the critical imagination demonstrated by Mr Walter Leechman whose grasp of jurisprudence led him to success in the case of *Donoghue v Stevenson*.⁴ Although the author seeks chiefly to prod the profession to respond to profound unfairness and injustice, the secondary gain to advocates from a reading of the essay is derived from its message about the need for careful study and consideration of all of the tools available to move the law forward in a progressive manner, not the least of these being the contributions of academics. On a more prosaic level, the image of the snail to exemplify the pace at which

² Ibid 97–103.

³ Ibid 119–34.

⁴ [1932] All ER 1.

the law evolves is vivid and usefully illustrates that progress may be slow;⁵ nevertheless, progress is required in light of our consideration of the present and future needs of our society.

The next essay worthy of especial notice was penned by the Honourable Roy McMurtry QC, formerly the Attorney-General of Ontario and Chief Justice of Ontario.⁶ In his excellent piece, 'More and More Lawyers; Less and Less Justice',⁷ the author chronicles the many advances he has witnessed (and influenced directly) as the chief law officer of Ontario and, subsequently, as the Chief Justice. At the same time, he points out that access to justice in the civil and criminal courts is most precarious, with senior advocates observing wryly that they 'could not afford the cost of litigating a civil claim from start to finish'.⁸ The author also quotes from the Honourable Rosalie Abella, a justice of the Supreme Court of Canada, to the effect that

we need to sever the philosophies of dispute resolution in the civil and criminal justice systems. The dispute in criminal law is between an individual and the state ... but civil justice is usually a dispute between two private parties. Can we honestly say that the fair resolution of such a dispute requires several years and resort to hundreds of rules? ... People want their day in court, not their years.⁹

Former Chief Justice McMurtry goes on, as do the other contributors, to stress the need for commitment in one's professional study habits, lest the excellence we strive for as a profession is not achieved, or obtainable. I commend in particular pages 143–5 on the initiatives of his government in establishing and developing a system of legal aid clinics to assist groups striving for access to justice. The author sees this development as key to improving the likelihood of 'justice for all', to return to my opening paragraph.

This theme of 'justice for all' will serve to introduce the second book I wish to review, by Professor Newman, on the subject of *Legal Aid Lawyers*. The 186 page monograph is superbly researched and edited, drawing upon a wealth of studies and, more importantly, on countless interviews with lawyers on the subject of their representation of individuals who have received legal aid. We

⁵ In this vein, recall the splendid image found at page 171 of J R Spencer, *Noted, But Not Invariably Approved* (Hart Publishing, 2014), of the common law moving 'by little steps, like centipedes and corgis, not leaps and bounds, like kangaroos'.

⁶ Readers interested in the truly inspiring account of this great jurist's life may wish to read my review of his autobiography, *Memoirs and Reflections* (Osgoode Society for Canadian Legal History, University of Toronto Press, 2013) in (2014) 60(4) CLQ 572.

⁷ Blaikie, Cromwell and Pink, above n 1, 137–48.

⁸ *Ibid* 141.

⁹ Citations omitted.

read of the, at times, poignant despair experienced by counsel unable to achieve justice for the poor and disadvantaged clientele who have entrusted them with their futures. We also read of rather callous and jaded counsel who, like Pacino's colleague, do not fret over the results of a trial because the fellow was guilty or, if not, had committed other crimes. Indeed, we share the author's well described indignation at coerced guilty pleas, indifferent preparation and insouciant responses to pleas for guidance and assistance.

The book consists of six chapters, beginning with 'Access to Justice and the Lawyer-Client Relationship' in which the author paints the picture of two extremes — on the one hand the advocate's total respect for an individual as a worthy recipient of aid, and on the other the reduction of the client to a file folder, bereft of a soul or of feelings — and a host of intermediate positions. In chapter 2 Professor Newman investigates the reality of legally aided criminal defences, in which the clients are often seen as little more than widgets worth so many euros a unit. Of course, the author also describes in detail healthy professional relationships, involving at times those poor individuals who are serving a life sentence on a form of instalment plan, as a contrast to the extreme pole of indifference. The next three chapters, 'Attitudes', 'Behaviour' and 'Outcomes' should be required reading in law school and then reviewed anew during continuing legal education seminars as they illuminate the potential harm a legal defence professional may visit upon those whose liberty is already precarious as they face the state apparatus.

Not surprisingly, we are made to understand that correct attitudes lead to proper behaviour, behaviour that will have no negative impact on the client when the outcome is reached, whether that outcome is favourable or not. To put it another way, a correct and respectful interview or series of interviews (as well as painstaking research for the case in question and general devotion to continuing legal education), may not result in the desired outcome, but at least the client who has benefited from the representation of a devoted and dedicated advocate will have gained much by way of respect for the system.

In the final analysis, both books are highly recommended. They teach us much about the majesty of the law as manifested by dedicated lawyers seeking to advance the progress of our societies whilst not overlooking the sad reality that a certain percentage of the Bar is neither interested in furthering their knowledge nor mindful of their professional oath to advance the cause of justice for all. Recipes for success are found in each chapter and prescriptions for a healthy professional and personal life abound, but they are best appreciated in light of the many sad comments as to the decline of our wonderful legal heritage.