

ONE

MONEY, SEX AND MADNESS

Most of the stories in this book are about dishonest lawyers. These lawyers (so a tribunal or court found) seized opportunities to behave badly, opportunities offered by legal practice.¹ They broke trust with their clients, or law firm, or both (often stealing money or abusing fiduciary relationships); they had sex with clients or others they met in the capacity of lawyer and who, arguably, were susceptible to their influence and power; or they participated in schemes that used the law to cheat the public or deceive the government.

Only a few lawyers are dishonest. Most behave honourably, serving their clients, profession, and community well. My stories of dishonest lawyers are about a handful of people in a profession that now, in Canada, has over ninety thousand members. Nonetheless, the stories of that handful give insight into the legal profession and legal practice, into how lawyers band together and govern themselves, and into how the law itself can fail or be perverted.² They imply reforms of the legal profession and the law, and I suggest in the final chapter what some of these reforms might be.

I started getting interested in lawyers gone bad in the earliest days of my first legal job. In September 1969, back from studying at Oxford University in England, I began a year as law clerk to Justice Wilfred Judson of the Supreme Court of Canada. The first case on the court's list that fall was that of Sam Ciglen, a Toronto lawyer appealing a criminal conviction of conspiring wilfully to evade income taxes.

Eager to make a good first impression on my judge, I worked hard to master this highly complex file. Finally, Justice Judson summoned me to his chambers. "What have you been doing?" he asked. "Reviewing the Ciglen case," I said, enthusiastic to explain at length the matter's difficult facts and complicated law and present him with a carefully nuanced conclusion. "Oh, Ciglen," he said with a dismissive wave of his hand. "Just another crooked lawyer!" Later the Supreme Court rejected Ciglen's appeal and he went to jail.³

After working at the Supreme Court, I taught law full-time for thirteen years, first at McGill and then at the University of Western Ontario (where I was law dean for a time). During those years as teacher and dean, I looked over the lectern at hundreds of young men and women eager to practise law. Did I and my fellow law professors say much to these students about the ethics, dangers, and responsibilities of their chosen profession?

No, we didn't, if only because virtually none of us had ever practised law, and we knew little or nothing about its temptations and difficulties.

In 1983, I turned to practising law on Toronto's Bay Street, becoming an associate and then a partner of Blake, Cassels & Graydon (known as "Blakes"), one of Canada's oldest and biggest law firms. This was shortly before the cases of Martin Pilzmaker and Bob Donaldson (a Blakes partner), described in Chapter 2, ushered in what I call the "new age" of lawyers gone bad. I practised corporate law at Blakes for seventeen years, watching the Canadian legal profession from a fine perch, and seeing first-hand what I had not seen as a law professor—how a lawyer could get into big trouble. It was during this time, as I gained experience and collected information about life in the front lines of law, that the idea of writing a book about lawyers gone bad came to me.

A 2004 Leger poll found that only 44 percent of Canadians trust lawyers, a dramatic fall from the 54 percent reported by the same pollster two years previously. (Firefighters headed the 2004 poll, with the trust of 97 percent of Canadians, while politicians were at the bottom with 14 percent.)⁴ A 2006 Harris poll in the United States found that only 18 percent of Americans trust lawyers completely; 50 percent trust doctors completely (top of the poll), and 6 percent trust stockbrokers completely (the bottom).⁵ In 2002, according to records of the Federation of Law Societies of Canada, Canadian law societies received about fourteen thousand complaints about lawyers, about the same number as the year before, and the year before that.⁶ (The federation apparently has not compiled comprehensive discipline statistics since 2002.) That's approximately one formal complaint for every five lawyers, year in and year out. Quietly considered, statistics such as these are hugely troubling. They imply that little trust exists in a relationship where trust is essential.

The most common negative belief about lawyers is that they are greedy⁷—so greedy that, given the chance, they may steal. Perhaps people believe this because they know temptation stares lawyers in the face. Lawyers are often entrusted with other people's money; in the febrile public imagination, they cannot always be counted on to move that money along to its rightful destination. But, when money in a lawyer's hands goes missing, the simple notion of greed often seems inadequate to explain what happened. Some lawyers whose stories I tell in this book took other people's money to pay for what they could easily afford themselves. Bob Donaldson (Chapter 2) carelessly used clients' funds for unrelated business trips that could have been billed to someone else, and for trivial personal entertainment expenses. Dan Cooper (Chapter 3), earning almost half a million dollars a year in the late eighties, put his professional and personal life in high jeopardy for less than half that amount, stealing to pay for entertainment and buy art.

Even when simple greed appears to explain sufficiently what happened, on closer examination the truth may seem more complicated or different. Martin Pilzmaker

(Chapter 2), a Toronto immigration lawyer and central figure in the Lang Michener scandal, who committed suicide when faced with charges of theft, fraud, forgery, and conspiracy, had a chauffeured Rolls-Royce and wore a \$20,000 fur coat. But what motivated the tortured Pilzmaker seems not to have been money, but his desire to be a member of the legal establishment rather than a risible fringe player. Other lawyers inexplicably participated in economic frauds without any personal gain. Richard Shead (Chapter 11), once Winnipeg's most prominent tax lawyer, and Martin Wirick (Chapter 12), a Vancouver real estate practitioner, helped clients commit fraud and received only modest legal fees. Their professional lives, it seems, were ruined for nothing at all.

There are, of course, motives other than money. Lawyers are sometimes accused of using their status and power to extract sexual favours from vulnerable clients. This is said to be unprofessional behaviour—a breach of fiduciary duty—and, depending on the circumstances, to be criminal conduct as well. I tell at some length the stories of lawyers whose sexual appetite got them into trouble. But do the demands of libido plausibly explain how Agnew Johnston, a Crown attorney and member of the Thunder Bay Establishment, became a suspect in the murder of an underage prostitute (Chapter 8)? Or explain the passage of Michael Bomek from prominent criminal defence lawyer to proprietor of a hot dog stand (Chapter 9)?

Stealing and sexual misconduct may be distractions from the grinding boredom that is a characteristic of even the best legal practice. Cameron Stracher, author of *Double Billing: A Young Lawyer's Tale of Greed, Sex, Lies, and the Pursuit of a Swivel Chair*,⁸ has written in *The Wall Street Journal* that “[f]ew professions combine as much creative talent with so much mind-numbing work.”⁹ The risk-to-reward ratio of stealing and sexual misconduct is poor, but perhaps it's precisely the risk that is appealing. In *Seductions of Crime*,¹⁰ Jack Katz writes about the “sensual dynamics” of crime, the “sneaky thrill” of the nonviolent property crime. Robert Hare, in his book *Without Conscience*,¹¹ observes that psychopaths “have an ongoing and excessive need for excitement—they long to live in the fast lane or ‘on the edge,’ where the action is.” In *The Natural*,¹² his 2002 book about Bill Clinton (a lawyer, after all), Joe Klein reports the president's reply when, pre-Lewinsky, an aide asked him about his tendency to live dangerously. “Well,” said Clinton tellingly, “they haven't caught me yet.” (In April 2001, Clinton's Arkansas law licence was suspended for five years as part of an understanding with then Independent Counsel Robert Ray to end the Monica Lewinsky investigation.) Perhaps the phenomenon has been best expressed by Theodore Dalrymple, a British doctor: “Untold numbers of my patients, with every opportunity to lead quiet, useful, and tolerably prosperous lives, chose instead the path of complication and, if not of violence and physical danger exactly, at least of drama and excitement, leading to sleepless nights and financial loss. They break up marriages, form disastrous liaisons, chase chimeras, and behave in ways that predictably will end in disaster. Like

moths to the flame, they court catastrophe. As many have told me, they prefer disaster to boredom.”¹³

Money, sex, a thrilling escape from a boring life and career—these are not always adequate explanations. Sometimes, it seems as if there is some kind of madness at work (I know of no other way to put this). Perhaps a lawyer who commits a seemingly inexplicable crime is one of Robert Hare’s psychopaths, suffering from an antisocial personality disorder that makes him prone to irrational behaviour, deceit, and manipulation, and lack of regard for the rights of others. In *Without Conscience*, Hare describes psychopaths as “social predators who charm, manipulate, and ruthlessly plow their way through life ... Completely lacking in conscience and in feelings for others, they selfishly take what they want and do as they please, violating social norms and expectations without the slightest sense of guilt or regret.”¹⁴ He writes that psychopaths “can be very effective in presenting themselves well and are often very likeable and charming.”¹⁵ More than one of the lawyers I write about in this book, likeable and charming, have been described (often by prosecuting Crown attorneys) as “psychopaths.”

Contrary to what Jack Katz writes, sometimes it may not be the crime that is sensually appealing; it may be the criminal himself who is the attraction. A lawyer may become emotionally involved with a criminal client, becoming a confederate and abettor. Admiration, even love, explains what money, or other motives, cannot. The lawyer admires qualities in the client that he wishes he had himself, what the psychiatric literature calls “counter-transference.” Richard Shead, with no discernible practical advantage for himself, destroyed his career to help a rogue. Shead was a shy and introverted tax lawyer with an unremarkable personal presence; his client was a flamboyant and charismatic con man. “Reaction formation” may also be present, the defence mechanism that converts an unconscious and unacceptable impulse or feeling into its opposite so it can become conscious and be expressed. In reaction formation, attitudes and behaviours are adopted that are the opposite of true inclinations. The latent criminal becomes a policeman. The law-breaker-in-waiting goes to law school.

It may be some other kind of psychological disability that leads a lawyer astray. Patrick Schiltz, lawyer and law professor, former editor of the *Harvard Law Review*, former law clerk to Supreme Court Justice Antonin Scalia, wrote in the Autumn 1999 *Notre Dame Magazine*:¹⁶ “Lawyers suffer from depression, anxiety, hostility, paranoia, social alienation and isolation, obsessive-compulsiveness, and interpersonal sensitivity at alarming rates.” Schiltz refers to an oft-cited 1991 Johns Hopkins University study, which reported that lawyers suffer from major depressive disorder at a rate 3.6 times higher than non-lawyers who share their key socio-demographic traits. Schiltz thinks that lawyers are unhappy because they work too hard. To him, it’s simple. Every hour a

lawyer spends at his desk is an hour away from the things that give joy and meaning to life—playing with children, for example, or reading a book.

Martin Seligman, in *Authentic Happiness*,¹⁷ offers another explanation for the misery of lawyers. They are naturally pessimistic, he says; they view bad events as pervasive, permanent, and uncontrollable, rather than local, temporary, and changeable. “And if you don’t have this prudence to begin with,” writes Seligman, “law school will seek to teach it to you. Unfortunately, though, a trait that makes you good at your profession does not always make you a happy human being.”¹⁸ Seligman argues that lawyers who can see clearly how badly things might turn out for their clients can also see clearly how badly things might turn out for themselves. He also blames competition, and the “classic win-loss” nature of legal practice, for the unhappiness of lawyers. Once the practice of law meant giving good counsel about justice and fairness, but now it is a big business in which billable hours, take-no-prisoners victories, and the bottom line are the principal ends. “Lawyers are trained to be aggressive, judgmental, intellectual, analytical and emotionally detached,” he writes. “This produces predictable emotional consequences for the legal practitioner: he or she will be depressed, anxious, and angry a lot of the time.”¹⁹