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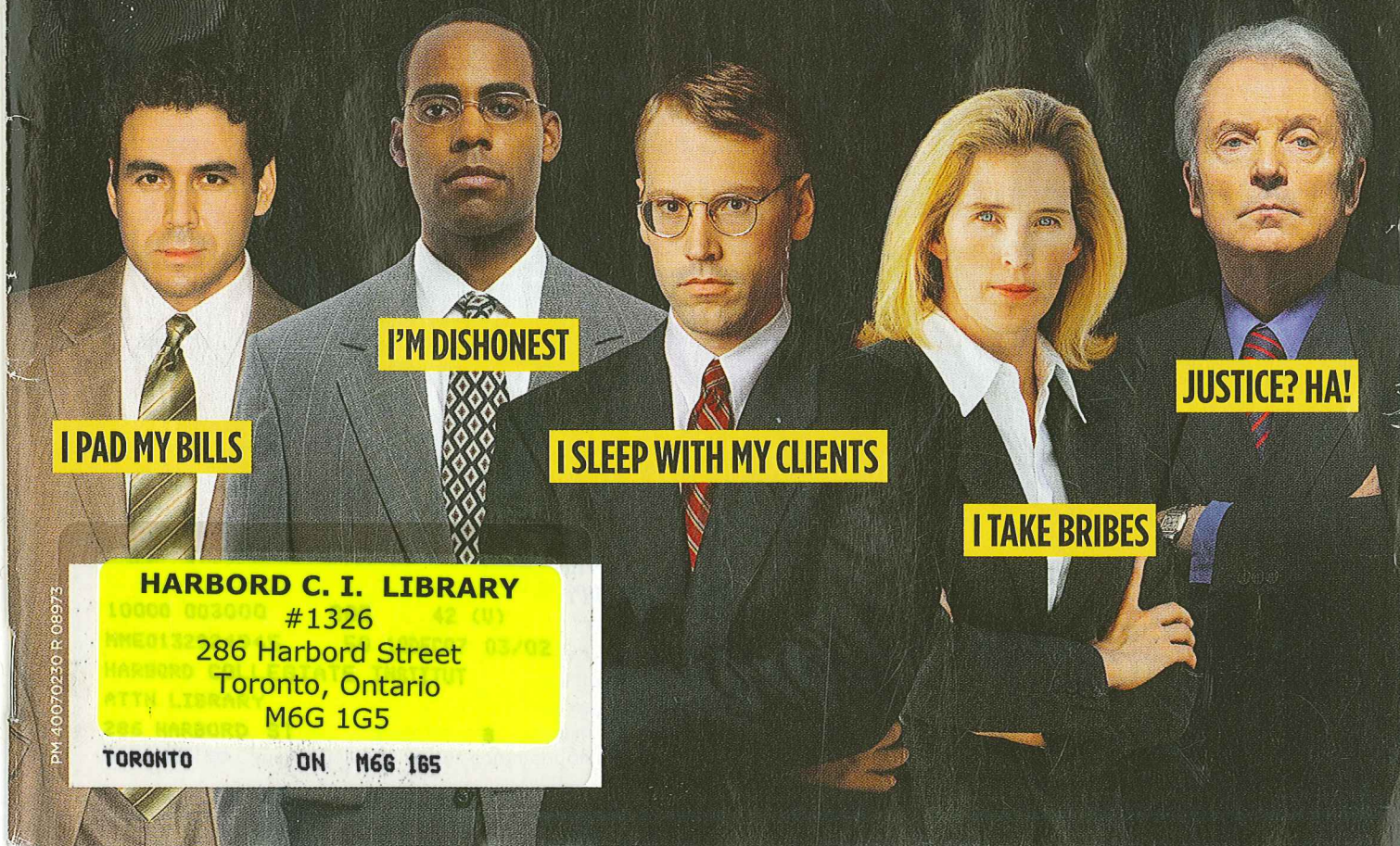
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EXCLUSIVE INTERVIEW

LAWYERS ARE RATS

**A top legal scholar and ex-Bay Street partner
exposes the corruption of his profession P.18**



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'One prominent lawyer told me, "Every lawyer is going to go into the office today and commit fraud." Then he laughed.'

EX-BAY STREET LAWYER PHILIP SLAYTON TALKS TO KATE FILLION ABOUT HOW LAWYERS BECAME GREEDY, UNPRINCIPLED ENABLERS OF THE RICH

Q It's hard to imagine a book titled *Lawyers Gone Bad: Money, Sex and Madness in Canada's Legal Profession* (Penguin) is going to be popular with your colleagues. Why did you write it?

A: I know lawyers are going to say, "Come on, he's talking about 15 or 20 members of a profession that has 90,000." But in telling these stories I'm trying to extract general ideas: the amoral nature of legal practice, the gross deficiencies of the regulation of lawyers, the sense of misery that pervades the legal profession.

Q: Do you think most of the lawyers you write about started off bad, or did the practice of law change them?

A: Why do people end up doing things they shouldn't do? Their upbringing, their background? The point is, I don't think there's anything in the legal profession now that restrains people's bad impulses, I don't think there's a generally accepted code of conduct or a vibrant disciplinary system.

This isn't just a Canadian problem, either. On my desk I have an editorial from a South African magazine which begins, "Let's face it, our legal system has effectively collapsed... One of the more obvious reasons is the culture of greed, pride and self-indulgent arrogance that pervades the legal profession." Then there's this gem from the *South China Morning Post* about a client who asked for a breakdown of his legal bill, which included

a charge for "recognizing you in the street, crossing a busy road to talk to you to discuss your affairs, and recrossing the road after discovering it was not you."

Q: As you point out, in 2004 only 44 per cent of Canadians said they trusted lawyers, whereas two years earlier, 54 per cent said they did. Why do people dislike lawyers so much?

A: Lawyers are seen as greedy, and in good measure I think that's a justifiable criticism, and also unprincipled. Thirdly, and this is perhaps the most important point of all, the average person has no real access to lawyers, to the legal system, to justice. It's all right if you're very poor and have the kind of problem that legal aid will help with, but most Canadians have middle-class incomes and simply can't afford to hire a lawyer. The chief justice has spoken out about this, but very little is being done to rectify it. It's fundamentally undemocratic. It's as if somebody tried to pass a law that said you can't vote in a federal election unless you have an income of \$100,000 or more. Well, there would be a revolution.

Q: How has the legal profession changed in Canada over the past few decades?

A: In very general terms, it has become a business: interested in profit, not interested in making judgments, not interested in providing access to poor people or even middle-income people. The old ideas—that lawyers have something to do with justice and fairness, and are part of an important system that provides a stable, safe, law-abiding soci-

ety—have, to the extent that you can generalize, been lost by members of the legal profession.

Q: You taught law for 13 years, both at McGill and the University of Western Ontario, where you were the dean of law. Is there something about legal training that nudges lawyers toward amorality?

A: Yes, I think so. Law students are taught and lawyers subsequently believe that it is not their job to pass judgment on their clients as people, or to pass judgment on what their clients want to do. Lawyers are enablers. They are there to try to do what their client wants, and are in many cases paid handsomely for it. The whole question of the values behind the rules of the legal system is not on the whole of great interest to law schools or the legal profession. And there's an additional point: lawyers are taught to manipulate the rules in favour of their clients. If you're a manipulator of rules, then you can't respect the rules as such or believe that they incorporate important values.

Q: How does that bleed over into their private lives?

A: I'm not sure of the answer to that, except to say that I think it does. There are studies about the marital success of lawyers, indicating that there's a higher divorce rate among members of the legal profession, and that may be true. The reason, I think, is that when you come home from the office, you don't become a different person. You don't shed all the ways of doing things and thinking

about things that preoccupied you during the day. [I can imagine] a wife making small talk and a husband cross-examining her as though she's on the witness stand: "What evidence do you have to support the fact that there's something wrong with the furnace?"

Q: You left teaching to practise at a big Toronto law firm. Did your time in the classroom prepare you?

A: Not at all. The world of the law school and the world of the big downtown law firm are two very different worlds.

Q: What kind of ethical dilemmas does the average lawyer face?

A The average lawyer in a big firm practice faces the requirement to put aside whatever kit bag of values, principles and ethics he may personally subscribe to and concentrate on making it possible for clients to do what they want to do. No client comes into a lawyer's office and wants to have a discussion about whether it's a good thing or socially desirable to do this, that, or the other. And they'll seek another lawyer if you try to have that discussion.

Q: There's a big incentive for lawyers to pad their bills, isn't there?

A: Yes, and it's common practice. It's easy to round up. It's easy to reflect on what you've done during the day and say you've worked for seven hours rather than six.

Q: What should you do if you get a lawyer's bill and the number of hours seems ridiculous?

A: The first thing you can do is refuse to pay it. People certainly do challenge bills, and often some kind of accommodation will be reached. Ultimately, you can take your bill to an officer of the court who will adjudicate on the fairness of it. But I think there always will be a tendency to pad bills, and it's because of the pressures lawyers are under to generate revenue for their firms and themselves. In big firms, there's an accepted number of billable hours a year that people have to reach, about 1,800 hours. If you're consistently shy of that, you're going to get into difficulty.

Q: Do lawyers talk about over-billing amongst themselves?

A: Any lawyer you ask will say, "We don't do that." First of all, you can get disbarred. And secondly, it might arguably be a criminal offence, a fraudulent activity. But there's a general recognition that it happens very widely. I remember once standing on a street corner with a prominent Toronto lawyer at nine in the morning, and he said, "Every lawyer in this province is going to go into their office today and commit fraud," then laughed. Another lawyer told me he was in favour of what he called "portal-to-portal

billings": he was in the office from 8 a.m. to 6 p.m. and figured that one way or another he had to bill 10 hours, which of course doesn't allow much time for bathroom breaks, or lunch, or doing something pro bono, or even gazing out the window. There are a number of ways you can gently, but over time, significantly inflate your billable hours. It's a large underground problem.

Q: Did you ever pad your bills?

A: My carefully considered answer is that I was part of the legal culture of the times and I did what it demanded.

Q: Lawyers are no longer at the top of the socio-economic totem pole. They're way below, say, investment bankers. Does that engender anxiety?

A: I think it does, there's a kind of economic voyeurism that takes place and generates a lot of discontent. Of course, the legal profession is big, and there are people in Canada who make \$2 million a year and there are also people just scraping by. But looking at the top end, many corporate lawyers at big firms make what most people would regard as a pretty handsome living, yet they look at their clients and think, "They're making more money than I am." And then perhaps they'll add, "And they're doing it because of all the clever ideas I bring to them. It's not fair!"

Q: You quote a former law clerk to a U.S. Supreme Court justice as saying that lawyers suffer from "depression, anxiety, hostility, paranoia, social alienation and isolation, obsessive-compulsiveness and interpersonal sensitivity at alarming rates."

A: And those are the well-adjusted ones!

Q: Why are lawyers so miserable?

A: If you practise law you're plunged into

a lot of them. You come home at the end of the day and say, "Why did I bother doing that? What I've really done is make rich people a little bit richer, maybe, and as a result of that I can send them a big bill." This is not a good way to spend your life. After you get over the initial drama of this high-stakes environment, you're left with the feeling that this is a pointless occupation and you should find something more worthwhile to do.

Q: Why did most of your students go into law?

A: A lot of people don't like lawyers and would be horrified if their child came home and said, "I want to be a lawyer." But it is a profession, and one with the potential of generating a significant income. It gives its members a certain power, the power of knowing something that other people don't know. And there is a kind of glamour associated with it. Look at all the television programs that deal with the law—people are fascinated with this process, even though they're deeply suspicious of lawyers. And I think in many cases, certainly this was true in my case, people went into law because they couldn't think of anything else to do.

Q: Is there something else you should have done?

A: Oh yes, but I'm not going to tell you. I find myself increasingly in the role of critic of the legal profession, but I've spent my life as a lawyer. I went to law school in 1966, I've been in the legal profession one way or another for 41 years, it gives me no pleasure at the end of all that to look back and say, "Oh God, this was not a good way to spend my time."

Q: Is this book your penance?

A: [laughs] No. Do I think it will lead to

'If you're taught how to manipulate rules, you lose respect for them and that leads to a kind of arrogance: I'm bigger than the rules'

what is by its nature a highly competitive, highly stressful environment that sucks up most of your time at the expense of things that most people think go a long way toward making life worth living, such as spending time with family, or reading a book.

Q: The same could be said of many jobs, like banking or even journalism.

A: No doubt. But I think there's more to it for lawyers than simply stress. If you're a doctor, you may have a hell of a day, but at least you can be comforted by the idea that in some small way you improved the general state of society. I don't think you can believe that if you're a lawyer. I hasten to add that legal practice is very diverse, and there are lots of different kinds of people practising law, and this is not true of all of them. But it's true of

some kind of significant reform of the legal profession? Of course not. It's beyond any one person's ability to do that. Do I think some kind of significant rethinking of the profession is in order? You bet I do.

Q: So many of the lawyers you write about wound up stealing from their clients or bilking their firms. But greed wasn't always the motive, was it?

A: No. I first got interested in this whole subject in 1989 or 1990, when I was a junior partner [at Blake, Cassels & Graydon]. The most prominent partner, Bob Donaldson, a nationally if not internationally respected lawyer making lots of money, was suddenly found to have had his hand in the till. That was a startling fact in itself, but here's the thing that puzzled me most of all: the amounts

of money involved were relatively minor. It wasn't as if millions and millions had disappeared, it was more on the order of using money improperly to buy airline tickets to go to Bermuda for the weekend, penny-ante stuff by his standards. Why would somebody risk everything—reputation, friendship, professional status, even potentially freedom—for that? It certainly wasn't greed. And in nearly every case I write about, the lawyers didn't do it, for the most part, for money.

Q Well, is it self-destructiveness or is it arrogance?

A: Arrogance is part of it. If you're taught how to manipulate rules, you lose respect for them, and that leads to a kind of arrogance: I'm bigger than the rules, I'm not the average man on the street who needs to be law-abiding because I know how to get around the rules. And there may be just a touch of the more common form of arrogance, too, which is "I'm smarter than they are, they'll never catch me." But you can be arrogant and still have a healthy sense of what's good for you, and what dangers you shouldn't run. I have some speculation about why people behave this way, and one reason is simple boredom. When people are bored, there's a tendency to take risks.

Q: What happens to lawyers who steal? How is the profession regulated?

A: The disciplinary process of the law societies in this country is deeply flawed. Lawyers are disciplined for breaches of professional rules, but it's like so much in Canada: everything depends on where you live. What can get you disbarred in Alberta won't have much effect on you at all in, say, Nova Scotia. The first difficulty with the disciplinary system is that if you're a lawyer who's alleged to have stepped afoul of the rules, you're investigated by the law society. If they decide you're a transgressor, they'll prosecute you, they'll hire a lawyer to do that, and the disciplinary committee itself is the law society. So you have the investigator, the prosecutor and the judge all essentially representing the same institution. I thought in this country we had a fundamental principle, that the person who investigates and prosecutes isn't the same person who judges.

Q: Is yours a widely held opinion?

A: I haven't heard people rising up to complain about this. In the United States, by the way, disciplinary matters in just about every state are heard by courts, not by panels of the bar association, which is how it should be. I think Canada really has to get its act together. Look at the reforms in the U.K., which woke up some years ago to this problem and [adopted] quite sweeping reforms that largely removed self-regulation from the

legal profession. Why in heaven the same sort of reforms are not under consideration in this country I do not know, except that self-regulation is regarded with quasi-religious fervour.

Q: What's the basis of the opposition to anything but self-regulation?

A: The ideological underpinning is that a fundamental responsibility of the legal profession is to help citizens fight the state. It's an important offsetting influence to the power of the state, and therefore cannot be regulated by the state, because then it will tend to become subservient to it. I just simply reject that. There are all kinds of other ways that you could ensure independence when it matters, and there are all kinds of ways you could get advice from lawyers without giving them final say over what happens. And in any event, lawyers only regulate themselves pursuant to legislation that is passed by provincial legislatures, which they could change tomorrow.

Q: You talked to quite a few lawyers who've been caught doing something wrong. How many of them actually expressed remorse?

A: On the whole, there was not a whole lot of remorse expressed. I don't think these were penitent people who were terribly ashamed of doing a bad thing. Take the case of Martin

and does the lawyer say, "Just a minute sir, this is not right"? No, of course not, because dull people can easily fall under the sway of charismatic people. I think quite a lot of that happens in the legal profession, though I have to emphasize that there's a lot of difference between [a big firm] at Bay and King in Toronto and the single practitioner in Goderich. If you have an important client, a Conrad Black or somebody like that, who says he wants to do something but you refuse, he'll just say, "Fine, I'm sure the law firm across the street will do it." If your important client, who is also a big source of revenue for your firm, walks out the door, well, it's not going to be good for your career. It takes a very strong and principled person to do that, particularly when you consider that the law is very complicated,

'There's always a tendency to pad bills, and it's because of the pressures lawyers are under to generate revenue for their firms'

Wirick, the B.C. lawyer who was involved in a massive real estate fraud, I think it's the single biggest legal fraud that Canada has ever experienced. It wasn't as if he was stockpiling money to run off to South America. The most he ever got out of it was payment of very ordinary legal bills, and in fact I don't think the client ever even fully paid them. So he didn't do it for money. When I talked to him, he said things like, "Oh, I was just so tired, I just didn't give a shit, I was unhappy, I hadn't had a vacation in years." What he did not say was, "When I think back on what I did, I'm so sorry about it, I'm so sorry about people who lost money as a result of my activities." I think he was hapless, a bit of a schlemiel, and his client was a charismatic, glamorous person.

Q: Is it common for lawyers to become enamoured of their clients?

A: Oh yes, very much so. I think lawyers can have a hero worship of their clients. Think of the whole Conrad Black trial, that poor Mark Kipnis who will probably go to jail because he did what the boss told him to do. It's [a case of] the dull old lawyer with the charismatic client who says "Do this, do that,"

and it's not always absolutely clear what's right, what's wrong, what can and cannot be done. That makes it easier to say, "Well, let's try it out and see what happens."

Q: Who stands out in your mind as being the worst of the bad lawyers you wrote about? I'm guessing you're going to say Ingrid Chen, the Winnipeg lawyer.

A: There's no doubt that she behaved abominably. She's now in prison, because it was established that she hired enforcers to beat up clients who upset her, along with a whole variety of other things. But the behaviour was so bizarre, so manifestly self-destructive and likely to lead to catastrophe, that you can't just say she's a bad person who got what's coming to her. It's more that she has some deep problems that need to be sorted out. An interesting case is Michael Bomek, a criminal lawyer based in Flin Flon, Man. with a largely Aboriginal clientele, who was thought to be a creative and gutsy lawyer who fought against an RCMP detachment that was thought to be racist, and indeed there was subsequently a government commission that found it was racist. He was a notable figure and something of a hero, almost. And then it turned out that



PHOTOGRAPH BY RYAN TAPLIN

he had been having sexual relations with some of his male Aboriginal clients. The RCMP accused him of sexual assault and indeed he pled guilty, went to prison and was disbarred, though for other reasons. I went to Flin Flon and to the reserve and I wound up feeling sorry for him, I found him quite an engaging character. I wrote [an article] about him but subsequently he got into all kinds of other trouble. He got out of prison and was running a hot dog stand in Prince Albert—where's Monty Python when you need them?—but he wasn't just selling hot dogs, he was selling marijuana. The police busted him. But then the whole thing took a sinister turn, he was charged with further sexual transgressions involving children and was convicted of some of them. You look at this guy and there's a lot, dare I say it, to admire, certainly in his early career. But perhaps, as the Crown attorney who prosecuted him the first time around told me, he's a psychopath. I'd be very surprised if he had the slightest little bit of penitence in him.

Q: Why are lawyers now so instrumental in money laundering operations?

A: There's recently been a whole spate of national and international rules about money laundering, trying to get rid of it because it promotes organized crime. In Canada, lawyers have resisted, successfully, application of those rules to the legal profession. To simplify, they've said, "You cannot oblige us to

report cash transactions to a government agency"—which, by the way, banks are now obliged to do—"because to do that would be a fundamental violation of solicitor-client privilege." Meanwhile, those who know anything about this, like the auditor general of Canada and various high officials in the RCMP, have said that partly because they're largely exempt from these rules, lawyers can become, and some have become, agents of money laundering. You go to your lawyer with cash because he's exempt from these rules. The law society will say, "No, no, no, we have rules about this, any cash transaction over a certain amount has to be reported to the society." But there certainly isn't the full oversight by federal authorities that you find in all other areas where financial transactions happen. I think invoking solicitor-client privilege is nonsense. If you're a lawyer, and somebody walks into your office and says he's going to buy a house and needs to put a \$50,000 deposit down, and here's a briefcase full of cash, would you not think, Hmmm, this is very unusual? It's not some massive encroachment of solicitor-client privilege to address this issue. It's just plain common sense.

Q: You don't have a lot of warm feelings for tax lawyers, do you?

A: In some ways I have a deep admiration for them, because tax law is probably the most intellectually complex area of law. But there's something in the nature of it that's

pernicious. Tax shelters are highly complex schemes designed with only one purpose in mind: to stop somebody paying tax he would otherwise pay. The kind of society we live in, with its great public projects such as universal medicare, depends on tax revenue. At some point you have to be very unhappy about schemes that deprive public coffers of money that's needed and simply make rich people a whole lot richer. In the U.S., there's been a tremendous outcry about this, but that hasn't happened in Canada. It should.

Q: The lawyers in your book are almost as oversexed as the ones on TV. Is it ever okay to sleep with a client?

A: Various law societies have various answers that veer from zero tolerance to the Wild West. I don't think anybody has a clear answer. My answer is, there's a huge difference between a male lawyer taking advantage of a highly vulnerable woman and a lawyer who has as a client a highly competent general counsel of a major corporation well able to take care of herself. But if somebody asked me in the abstract for advice, I would say, don't do it!

Q: Have you ever felt embarrassed to tell people you're a lawyer?

A: When people on airplanes ask what I do, I say I'm in auto parts. No one wants to talk about auto parts. But if you tell them you're a lawyer, everybody has a story about how they were screwed by a lawyer, or the terrible thing a lawyer did to Aunt Bessie.

Q: How can the average person protect herself from being cheated by a lawyer?

A Do not be overawed, and feel free to question both the advice and the bill. Before the Internet, lawyers were gatekeepers, really the only ones, to this vast store of legal knowledge. Now, anybody can go on the Internet and get any Canadian statute, regulation, or case, easily. But people don't seem to be doing that in the same way they do it with medicine, where if you have a pain in your toe, you go on Google.

Q: What's your best lawyer joke?

A: Well, there are so many. One I sort of like is that there's this ancient lady who shuffles into her lawyer's office and asks for a new will. He says fine, and charges her \$200. She hands him a wad of bills and shuffles out, leaving him counting the money. She's given him \$300. So now he has a real ethical dilemma: should he tell his law partner or not?

Q: That's sort of funny.

A: It's not very good, is it? Oh well. M

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