



EX POST

And here I thought the creatures from your *Fables* were fictional . . . though I suppose at an appellate court it would have been more fitting to encounter a vulture!

Roland Nadler

*Email to D. Brock Hornby (July 1, 2017)*

Pictured: Roland Nadler (law clerk to Judge D. Brock Hornby, 2016-17) and Jurist Owl at the Supreme Court of Canada in Ottawa. Photograph by Stephen Hay.



# FABLES IN LAW, CHAPTER 9

## LEGAL LESSONS FROM FIELD, FOREST, AND GLEN

*D. Brock Hornby*

We are pleased to present the third installment of the hoped-for (see 19 GREEN BAG 2D 95 (2015)) third trilogy of Aesopian legal fables by Judge Hornby. Now we can aspire to a trilogy of trilogies of trilogies!

— *The Editors*

## AN OWL'S OUTLOOK, AND TENURE ON THE PERCH

There was a constant need for new arbiters throughout the Forest, as arbiters like Owl approached retirement and case filings continued to grow. Some of the experienced arbiters agreed to teach new appointees the skills and techniques of being an arbiter. Generally, they conducted the first training session immediately upon the new arbiter's appointment. They discovered that the new arbiters then were hungry for and open to every idea provided them. They conducted a second session about six months later, after the new arbiter had acquired some experience on the

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job. It turned out that at that juncture, these still-new arbiters had become far less open to considering unfamiliar ideas and practices, and instead were more interested in telling their classmates how arbiters did it in their particular neck of the Forest. But as still more years passed, in mid-career some arbiters began to look thoughtfully and critically at what they were doing and re-opened themselves to new ideas as they strove to improve their habits and practices.

*Moral: The insecure neophyte judge is open to all information, but it is a short time before routine develops that is resistant to change. After more seasoning, however, the mind sometimes (not always) re-opens to other ideas.*

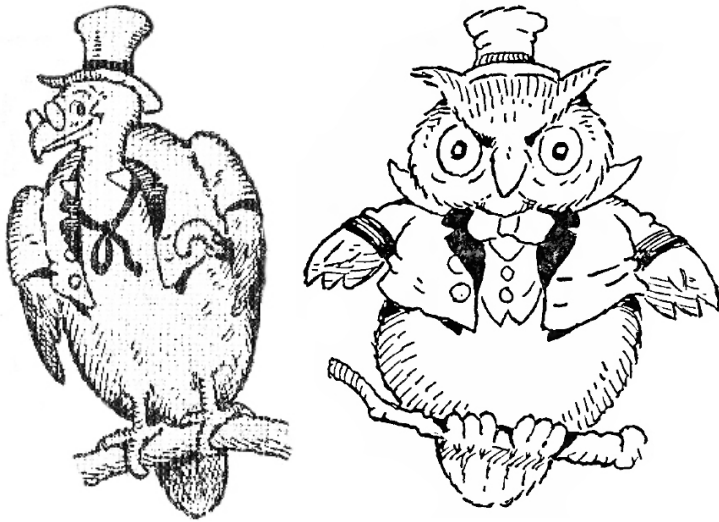


## ON THE BLESSINGS OF SQUIRRELS

The Vultures regularly hired recent Academy law school graduates as clerks – Squirrels – to assist in research and writing their opinions. Although the Squirrels’ tenures varied, the Vultures hired them for the most part on a rotating basis for one or two years before Squirrels headed on to new pursuits such as working for a well-paid advocate or teaching at the Academy. The individual Vultures and Squirrels developed close professional and personal relationships during the clerkship experience, with the Vultures passing on to Squirrels many of the professional and life lessons they had learned. Indeed, the Vultures discovered that Squirrels were often more open to such advice than the Vultures’ own offspring. Squirrels

believed they learned more from Vultures in one year than they had learned in three years at the Academy. They treasured the experience and, in later years, even though they became more prosperous than the Vultures (who earned less money than many advocates), tended to consult the Vultures for whom they had clerked for further professional advice, and regularly maintained contact either at reunions or by other means. The Vultures in turn cherished the opportunity to stay in touch with younger professionals, to enjoy their accomplishments vicariously, and to give advice as called upon over the years.

*Moral: Although judges do not command the generous salaries of many lawyers, the opportunity to mentor new professionals at the beginning of their careers is priceless.*



THE SELF-CELEBRATIONS OF THE VULTURES,  
AND THE OWLS, AND . . .

Some of the Vultures were concerned that the Magpies who wrote and broadcast about the Vultures' decisions for the general Pine Forest population did not really understand what the Vultures did. These Vultures believed that they were too distant from Pine Forest denizens. As a result, they began to make public appearances, as on a quiz show or talk

show, or at a holiday gala. Some started granting interviews with the Magpies. The Magpies gave extensive coverage to all such appearances and interviews, treating the Vultures almost like rock stars, and it appeared that certain Vultures began to enjoy it. Some of the resulting coverage did increase public understanding of what the Vultures did; other coverage made them look like any other public figure who craved public attention. And sometimes the Magpies prodded a Vulture into making an ill-advised comment, such as commenting on a case, or an election. The Pine Forest denizens over time became accustomed to this new image of their appellate arbiters. Trial arbiters like Owl took note of this new role for arbiters and began to give their own interviews and make their own public appearances. Collectively these developments shifted the image of an arbiter away from that of a sober and detached decision-maker and more toward that of a player in public affairs.

*Moral: In judges' dealings with the public, there is a fine line between educating the public about the judiciary and becoming an injudicious part of the story or the entertainment.*

### ... THE BEAVERS

In the beginning, a substantial number of professors at the Forest Glen Academy had experience as practicing advocates. As the years passed, however, the Academy became more concerned with building its reputation upon faculty publications that dealt with cutting edge issues as defined by other academics. Faculty favored this approach partly because it made them more attractive candidates for hiring and promotion at the Forest Glen Academy or at other institutions. As a result, the Academy began to hire and retain professors who were interested primarily in publishing rather than in the practice of law or in teaching advocates how to improve their own practice. Sometimes the Academy hired practicing advocates as "adjunct" professors or "professors of practice" to teach practical or clinical courses, but generally failed to accord them the same status as mainstream faculty. The mainstream professors who were focused on publishing lost motivation and interest in serving on committees to assist the tribunals in drafting their rules or the Forest legislature in drafting statutes to govern Forest denizens. Their writings became more abstruse and focused on an

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audience of other law professors, rather than research and writing that might help the arbiters, advocates, or legislators. The Academy came to see itself more as an academic graduate school unrelated to the profession (except when it was time to raise money). Arbiters, advocates, and legislators in turn no longer saw the Academy as an available asset in their efforts to improve the quality of tribunal decisions, the practice skills of advocates or legislation.

*Moral: A law school defines its own mission. But if the academy at large turns generally inward for its intellectual pursuits and professors ignore the needs of judges, legislators, and lawyers, the connection between the profession and the academy is damaged.*



*GB*