

Book Review

Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case. By Kent Roach. McGill-Queen's University Press, 2019. 328 pages.

Reviewed by Luke S. Fought*

Gerald Stanley, a Saskatchewan farmer, was charged with the murder (and alternatively manslaughter) of Colten Boushie, a young Indigenous male, arising out of an incident on Mr. Stanley's Saskatchewan farm on August 9, 2016. The trial and Mr. Stanley's acquittal by a jury that did not include a single visibly-Indigenous person electrified the country and sparked furious debate about the treatment of Indigenous people in the criminal justice system.

In *Canadian Justice, Indigenous Injustice: The Gerald Stanley and Colten Boushie Case*, Professor Kent Roach, perhaps Canada's leading criminal law scholar, sets out to place the case in its "larger historical, political, social, and legal context" and discover "what the case tells us about Canadian law, politics, and society." He places particular focus on "how the Stanley trial reveals the potential for injustice, especially in cases involving Indigenous people as accused, victims, or witnesses" (11).

Mr. Boushie, a young Indigenous man, and four companions came onto Mr. Stanley's property in rural Saskatchewan after a day of drinking and swimming. Their vehicle got a flat tire on the way home, and two of the occupants tried to start one of Mr. Stanley's vehicles. Mr. Stanley and his son ran towards the vehicle, which collided with another of Mr. Stanley's vehicles, close to where his wife was mowing the lawn (3–5).

Mr. Stanley retrieved an old pistol from his garage, fired two warning shots, and approached Mr. Boushie's vehicle, to see if his wife had been run over (she wasn't). He reached into the cab of the vehicle and tried to turn it off when his gun discharged behind Mr. Boushie's left ear, killing him.

In a controversial “hang fire” defence, Mr. Stanley testified the gun discharged accidentally, suggesting a delay between the pulling of the trigger and the exit of the bullet from the gun. The only other witness who said she saw what happened was Belinda Jackson, seated right behind Mr. Boushie when he was shot.

Professor Roach carefully examines all the legal components of the trial, including the procedures deployed in selecting the jury; the evidence offered at trial, including the expert evidence on the “hang fire” defence; the courtroom advocacy of the prosecution and defence counsel; and the rulings of the trial judge.

Professor Roach concludes that the verdict represents a “miscarriage of justice” brought about by a recipe that included the following ingredients:

1. Discriminatory (but legal) procedures in the jury selection process, which led to no visible Indigenous representation on the jury (90–124);
2. The trial judge’s treatment of expert and lay evidence on the crucial issue of “hang fire” or accidental discharge (125–145);
3. The prosecution’s failures:
 - a. to explore innocent explanations for inconsistencies in the testimony of Ms. Jackson, a young Indigenous woman and important witness, on the issue of murderous intent (153–157);
 - b. to challenge potential jurors for racial bias or pre-trial publicity (111–117); and
 - c. to effectively answer the defence expert and lay evidence on the “hang fire” (accidental discharge) issue (140–143).

Professor Roach brings his formidable command of all aspects of criminal law, including procedure, evidence, and advocacy, to bear on this complex and tragic failure of the Canadian justice system. The book is required reading for anyone practising criminal law in the Yukon, including judges, prosecutors, and defence counsel. The Yukon has a significant Indigenous population, so it is especially important for its criminal law practitioners to be aware of the potential for injustices to be visited on Indigenous people.

The prosecution on the Stanley/Boushie case comes in for much criticism from Professor Roach. He posits that the conduct of the Crown prosecutors significantly contributed to the miscarriage of justice, and in his examples are lessons for prosecutors who face similar issues in the North.

Professor Roach concludes that Indigenous witnesses were mistreated at the trial, and this had the effect of perpetuating stereotypes relating Indigenous people to “alcohol, theft and danger” (147). He argues that the witnesses, rather than Mr. Stanley, were “placed on trial,” which distracted the jury from the real legal issues they had to decide (163).

The most startling example is the treatment of Ms. Jackson, who was inside the car when Mr. Boushie was killed (an incomprehensibly traumatic event) and who gave a statement to the police while under arrest at the scene. She was therefore the one and only Crown witness who could testify whether Mr. Stanley intentionally shot Mr. Boushie. There were discrepancies between her trial testimony and other evidence (she said she saw Mr. Stanley fire two shots at Mr. Boushie), but the Crown prosecutor, who “did not appear to have much empathy for Jackson” (154), never explored any of the many possible innocent explanations for this discrepancy. This led to the prosecutor taking the baffling decision to tell the jury “I don’t intend to be relying on what she told you” (154) in regard to her evidence that he himself elicited.

The book reminds all players in the justice system that while the stakes are always high in criminal trials, cases involving Indigenous persons as witnesses, victims, and accused particularly demand strict attention and empathy if the dismal historical treatment of Indigenous people is to truly become an object of the past and not a feature of the future.

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