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Music Borrowing and Copyright Law: A Genre-by-Genre Analysis

Hannah Rosborough

Dalhousie University Schulich School of Law, hannah.rosborough@dal.ca

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***Indigenous Justice: True Cases by Judges, Lawyers, and Law Enforcement Professionals.* Edited by Lorene Shyba & Raymond Yakeleya. Calgary: Durville & UpRoute Books, 2023. xi, 275 p. Includes index. ISBN 9781990735264 (softcover) \$35.00.**

Indigenous Justice is a collection of stories and essays written by legal and law enforcement professionals, both Indigenous and non-Indigenous, who have worked with First Nations, Inuit, and Métis people in the Canadian criminal justice system. Edited by Lorene Shyba, PhD, and Dene filmmaker and writer Raymond Yakeleya, *Indigenous Justice* is the newest book in Durville's *True Cases Series*. Durville & UpRoute Books is an independent press located in Calgary, Alberta, that publishes books with a focus on true cases, biographies, and Indigenous literature.

The book has three parts, each containing chapters written by members of a specific profession: judges (and a senator) in Part I, lawyers in Part II, and law enforcement and parole officers in Part III. The chapters are in memoir style and are therefore largely based on individual experiences. In some cases, they are supplemented by external research.

While the chapters in *Indigenous Justice* cover a range of perspectives and topics, common themes emerge throughout the book. One theme is the injustice experienced by Indigenous People in the Canadian criminal justice system. Although stories of injustice and suffering may be distressing to read, Chief Justice Shannon Smallwood explains, "Only by learning about the experiences of Indigenous People in the criminal justice system in the past can we move forward" (p. xi).

The injustices recounted in this book are numerous and varied, and while some took place in the more distant past, others continue today. Despite the variety of content, what all the stories have in common is the existence of racism and discrimination within the Canadian criminal justice system. In "The Story of S: A Study in Discrimination and Inequality," the Honourable Kim Pate discusses the factors contributing to the gross over-representation of Indigenous women in Canadian prisons. In "Treaty Lessons: The Killing of Colten Boushie," Eleanore Sunchild, KC, tells of the systemic racism she witnessed in the court system while supporting the family of Colten Boushie during the trial of Gerald Stanley. And, in "There is No Law Against It Constable," Ernie Louttit recounts his experiences in the 1980s confronting indifference and apathy within the Saskatoon Police Service toward addressing the problem of solvent abuse among Indigenous youth. These are just a few examples of the many stories illustrating the injustices faced by Indigenous People in the criminal justice system.

In general, the book presents the implementation of culturally appropriate processes and programs as a way for the Canadian criminal justice system to move forward in its interactions with Indigenous People. Although many of the chapters contain darker themes of suffering and injustice, there are also positive themes in the book. One such

theme is recovery and rehabilitation through the discovery and implementation of Indigenous knowledge and cultural practices; for example, several chapters contain accounts of Indigenous inmates who have found healing by participating in restorative justice and other culturally relevant programs within the prison system. Other chapters focus on the experiences of legal practitioners who have facilitated or participated in sentencing circles and other restorative justice practices, and who advocate for their continuation and enhancement across the country. Other chapters focus on innovative programs that seek to restore relationships between Indigenous communities and the justice system, such as the Human-Centred Engagement and Liaison Partnership (HELP) unit of the Edmonton Police Service, which pairs police officers with Indigenous navigators to provide support to vulnerable people in the community.

This book succeeds in raising awareness of the historic and ongoing injustices experienced by Indigenous People in the Canadian criminal justice system, as well as in showing a way forward with culturally appropriate processes and programs. The fact that the authors come from all levels of the criminal justice system exposes the widespread and systemic nature of the problems. The first-hand accounts are both compelling and easy to read, making the book accessible and engaging for a variety of readers.

I recommend *Indigenous Justice* to any library that supports educational institutions that train future legal and law enforcement professionals. In addition, public libraries should consider acquiring this book to provide the public with an opportunity to learn about the experiences of Indigenous People in the Canadian criminal justice system. A percentage of the proceeds from the purchase of the book goes to the Stardale Women's Group and Esquao Institute for the Advancement of Aboriginal Women.

**REVIEWED BY
LESLIE TAYLOR**

*Research & Instruction Librarian
Lederman Law Library
Queen's University*

***Music Borrowing and Copyright Law: A Genre-by-Genre Analysis.* Edited by Enrico Bonadio & Chen Wei Zhu. Oxford: Hart, 2023. xviii, 464 p. Includes bibliographic references and index. ISBN 9781509949380 (hardcover) \$249.75; ISBN 9781509949397 (ePub) \$199.80; ISBN 9781509949403 (PDF) \$199.80.**

Copyright and music borrowing have received significant media attention in recent years. In 2015, a jury found that the song "Blurred Lines" by Robin Thicke and Pharrell Williams infringed the copyright of Marvin Gaye's estate due to having a similar feel to the song "Got to Give It Up." Thicke and Williams paid US\$7.3 million to the Gaye estate.¹ This heavy-handed decision had downstream effects on copyright litigation. In 2019, Taylor Swift was accused of infringing the simple line, "players gonna play, play, play, play, play and the haters gonna hate, hate, hate, hate, hate." She

¹ *Williams v Gaye*, 895 F (3d) 1106.

settled out of court.² In 2021, Olivia Rodrigo, an artist who has talked openly about the musicians who have inspired her, retroactively ended up paying half of her royalties for the song “Good 4 U” to the band Paramore, despite her legal team having reached out to them before publishing her debut album. This scenario was not about lyrics, but a similar melody and chord progression. Rodrigo also added a songwriting credit for the band, presumably to avoid a lawsuit.³ In a full circle moment in 2023, Ed Sheeran won a copyright infringement lawsuit brought forward by the Gaye estate claiming the song “Thinking Out Loud” infringed chord progressions from “Let’s Get It On.” Sheeran has since said, “These chords are common building blocks which were used to create music long before ‘Let’s Get It On’ was written, and will be used to make music long after we’re gone. They are in a songwriter’s alphabet, our toolkit, and should be there for all of us to use.”⁴

While these infringement claims are but a few recent and popular examples, they highlight several points of significance. First, the relationship between copyright law and music borrowing is dynamic. Second, copyright and music borrowing have most often been considered and centred around a Western perspective. Third, there is a concern that copyright may stifle creativity in the music space. And fourth, the relationship between copyright law and music requires a fulsome review to better understand the borrowing norms and practices of musicians.

Edited by Enrico Bonadio and Chen Wei Zhu, *Music Borrowing and Copyright Law: A Genre-by-Genre Analysis* confronts the valuable task of addressing these points of significance, amongst others. IP scholar Paul Heald states in the foreword that this edited collection is a significant contribution to copyright law, one that provides the raw material necessary for a rational law of music copyright, a law that could, and should, defer more to musicians themselves.

The central theme running through the collection is that music creativity and borrowing activities are amorphous. This is because music borrowing occurs through collective bargaining between musicians, creating an inherent struggle for the role of copyright law. Variations on this theme are demonstrated through genre-specific analyses. In this collection, experts and contributing authors of varying backgrounds, ranging from intellectual property law scholars and lawyers to forensic musicologists and cultural economists, write chapters on Western and non-Western music, including genres such as pop, hip-hop, jazz, reggae, calypso, Indo-Caribbean, Irish folk, flamenco, Benga beat, Indigenous Australian, and Māori. Other chapters encompass broader descriptions of types of music, including Israeli, South African, Japanese, traditional Chinese, and traditional Greek. While not comprehensive, this widened scope of genres is notable and provides a necessary shift away from a primarily Western perspective.

The collection is structured in two parts. Part I: Music Genres,

Borrowing and Copyright focuses on the foundational issues of music borrowing and provides a theoretical foundation for recalibrating copyright law with music-borrowing practices. Broadly speaking, this part provides a high-level overview of the ontological struggle of music borrowing and copyright law. It speaks to how essential a nuanced understanding of culture is in relation to music creation (they cannot be separated) and, as a result, how black letter copyright law cannot adequately address reworking and music borrowing because copyright is impacted by both genre and culture.

Part II: Analysing Music Genres and Their Relationship with Copyright extends copyright analysis beyond the existing literature’s concerns about similar melodies and lyrics. It does this, in part, by providing clear examples of the norms and traditions of music borrowing and reworking these as tenets of music creation for specific genres and geographic regions. Woven throughout each chapter is an examination of the delicate balance between creators’ rights and the preservation of artistic freedom. The themes of appropriation, colonialism, adaptation and derivation, plagiarism, hybridisation, and “the commons” are addressed across various cultures and through domestic legal frameworks. Altogether, Part II encompasses the indivisible nature of music and culture that tends to be neglected in conventional copyright analysis.

The editors point to several potential shortcomings. Despite recognizing the ontological problem of copyright and music in Part I, they then organise Part II by genres within broad geographic regions (e.g., Americas, Europe, Africa and Middle East, and Asia and Oceania). While this taxonomy serves to improve navigation for the reader, by doing so, it also identifies common socio-culture conventions of a region and tangentially supports the ontological nominalist impulse to localize smaller units of music into copyrightable material. The collection is not comprehensive in its provision of music genres—how could it be? The editors’ stated intention, arguably achieved, is to invite further scholarly communication on the topic.

Music Borrowing and Copyright Law: A Genre-by-Genre Analysis is an essential addition to any IP or music collection in an academic library. The novelty and value of this curated collection is that it extends the discussion of music borrowing to new, often overlooked regions and genres of music. It also addresses copyright through the intertwining historical cultural practices and norms that have since been overlooked. The chapters in this collection would make excellent reading for courses on IP, copyright, music history, and specific genres of music. Finally, anyone interested in music or IP at a general level will find this collection fascinating.

REVIEWED BY

HANNAH ROSBOROUGH

*Instruction & Scholarly Communications Librarian
Sir James Dunn Law Library
Schulich School of Law*

² *Hall v Swift*, 786 Fed Appx 711 (Mem).

³ Kirbie Johnson, “Olivia Rodrigo, Paramore, and the Murky Tides of Copyright Infringement” *Dazed* (7 September 2021), online: <dazeddigital.com>.

⁴ *Structured Asset Sales, LLC v Sheeran*, 673 F Supp (3d) 415; Daniel Kreps, “Ed Sheeran Wins ‘Thinking Out Loud’ Copyright Trial” *Rolling Stone* (25 September 2023), online: <rollingstone.com>.