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978-1-107-11691-7 - Fighting Fair: Legal Ethics for an Adversarial Age

Allan C. Hutchinson

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Fighting Fair

Along with used car dealers and telemarketers, lawyers are considered among the least trustworthy of all professionals. If lawyers want more respect, they will have to earn it by reframing their ethical responsibilities. In an original approach to law's moral dilemma, legal theorist Allan C. Hutchinson takes seriously the idea that 'litigation is war.' By drawing an extended analogy with the theory of ethical warfare, he examines the most difficult questions facing practicing lawyers today. Comparing the role of military officers to legal professionals and theories of just peace to legal settlement, Hutchinson outlines a boldly original approach to legal ethics.

Fighting Fair's recommendation for a more substantive, honor-based approach to ethics will be a thought-provoking tool for anyone concerned about the moral standing of the legal profession.

Allan C. Hutchinson is a distinguished research professor at Osgoode Hall Law School, York University in Toronto and an internationally recognized legal theorist. He is the author or editor of twenty books, including *Evolution and the Common Law* (2005), *The Province of Jurisprudence Democratized* (2008) and *Is Eating People Wrong?* (2010).

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ALLAN C. HUTCHINSON

Osgoode Hall Law School, York University



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For war is the hardest place: if comprehensive and consistent moral judgments are possible there, they are possible everywhere.

– Michael Walzer

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Preface

As always, I have incurred a lot of debts in researching and writing this book. I gave lectures, seminars and talks at a number of law schools and conferences; the feedback was most helpful and constructive. As well, I have been teaching a first-year course over the past few years at Osgoode Hall, titled ‘Ethical Lawyering in a Global Community’. I am grateful to my fellow instructors and to all the students in that course for pushing me on my ideas and giving me the opportunity to refine them.

Most importantly, I benefited greatly from conversations with Amaya Alvez, Lillianne Cadieux-Shaw, Richard Devlin, Adam Dodek, Trevor Farrow, Tiffany Herbert-Ramsubick, Cynthia Hill, Ian Langlois, Jennifer Leitch, Art Linton, Domingo Lovera, Chris MacCormack, Patrick Monahan, Derek Morgan, Hannah Ordman, Maria Panezi, Lorne Sossin, Samuel Sutherland and Emanuel Tucsa. Their critical assistance and intellectual support were invaluable. In researching and completing this project, I received a grant from the Social Sciences Research Council of Canada. That support has been indispensable.

Finally, I want to dedicate this book to my dad, who died soon after this book was completed. He lived a good and long life and set an example of what it is to fight fair.

May 2015