

Civility as a Tactical Tool

by

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for

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1. Introduction¹

Our profession is an adversarial profession, and gladiators for justice do not always follow the motto in the movie *Gladiator*: “Strength and honour”. **Some lawyers use litigation as a flamethrower.**

You know anyone whose go-to litigation/negotiation strategy is to out-asshole the other side?

How to recognize an a-hole? You know the traits, which include:

- Narcissism. (I’m the most special of all of you.)
- Impatience. (If I want it, I want it now.)
- Aggressiveness. (Get out of my way.)
- Entitlement. (That’s mine. Because it is.)
- Delusion. (Who are you calling an asshole?)
- Obliviousness. (Are you crying?)
- Also: Utter predictability².

Do any of us personally knows lawyers who, given a choice, we’d rather be smacked across our heads with an annotated *Constitution* for two days straight than be snowed-in with them in a remote cabin for a weekend?

We all know folks who practise/espouse uncritical conformity to what they consider group norms, believing others will thereby think better of them; that way they can also dissipate any sense of personal responsibility.

The bottom line is: there are some people you simply will not be able to change. What you *can* change is your *attitude* in dealing with such people, and also your *strategy* in dealing with such people.

There is an eminently practical reason you should give up trying to change other people, and instead change *your* attitude when *you* deal with such people: the folks who *should* be reading this, won’t. The folks on the other side of the file, they won’t change. Stop trying to do so.

2. Civility as a tactical tool

The adversarial nature of the legal system directs lawyers to a radical kind of individualism in a contest to trump rights. This context can foster patterns of discourteous, thoughtless, and rude behaviour towards one another:

¹ Ideas for this paper taken from writer’s personal experience and other material, including in *Select Bibliography*, and in quotes from other material therein.

² Ross McCammon, *How to Deal with Assholes*, Esquire, November 2015, p. 42

- the talking down (by a senior lawyer to an opposite junior lawyer: “You’re not a partner there yet?”)
- the belittling (the lawyer on the other side says “How are articles going?”)
- the sexist behaviour (“Are you the lawyer or his secretary?”)
- the threats (“If you don’t do XYZ by Friday, I’ll report you to the Law Society.”)
- the over-your-head game (calling someone “higher” up in your firm)
- during discoveries the constant interrupting, bickering, answering for the witness, and the continual and deliberately evasive “I’ll take that under advisement”
- the satisfaction-of-undertakings document dump on a Friday at 4:50 p.m.
- the service on your receptionist-on-her-way-out-the-door at 4:55 p.m. (so you get it the following Monday)
- the 2-page letter attacking you personally, copied to your client, copied to his client (or trying to be clever, attacking your legal assistant personally)
- being told that the other sides’ response to my court motion was to “F ___ off.”
- abuse of procedural motions/processes (under the guise of zealous advocacy of course)

One judge has written that the problem is exacerbated by:

- lawyers telling clients only what they want to hear
- clients shopping their cases, and being told how and when they’ll succeed, instead of risks
- lawyers (“many” the judge says) believing the hallmark of the adversarial system is keeping relevant information from the other side for as long as possible
- lawyers who take the position “I won’t cooperate until the *Rules* say I have to” or whose attitude is “*You’ll have to drag it out of me*”.

3. **Trying to legislate civility is impossible—not to mention impractical?**

I suggest that instead of thinking of civility as something that must be regulated or that will come naturally, we rather think of civility and courtesy strategically, as tools.

Sincere civility is the expression of a state of mind, a sign of character and personality. But more significantly, civility is a tactical tool all too often overlooked by lawyers. The practice of civility is usually undertaken on the basis of individual lawyers voluntarily restraining their impulses in favour of the greater good. But seen another way, however, civility is an inherent component of any legal strategy: in the same way that **good oratory is a good person speaking well, so good lawyering is a good person acting well.**

4. A time-waster, a money-waster

A common objection to civility is that it diminishes advocacy for the client. Yet, the reality is that incivility disserves the client because it wastes time and energy. Billable hours that should be spent working on the case are wasted by working the opposing counsel over.

An English proverb says: “the robes of lawyers are lined with the obstinacy of clients.” Is it also that the obstinacy of one lawyer lines the pockets of another—and the escalating tensions are matched by escalating fees?

5. A strategic option

Don't be civil because it's the proper thing to do. Be civil because it's the strategic thing to do.

6. Ten points for using civility as a strategic tool

No. 1: To most judges bad behaviour makes bad advocacy

Belligerent and discourteous behaviour in the eyes of strong judges is not persuasive. In fact, discourtesy in delivery can undermine an otherwise strong argument:

- “Incivility does not go unnoticed. The lives of judges are rather circumscribed. Often, we only have each other to talk to. In our region, we have lunch together almost every day. Invariably, the lunch discussions are about lawyers. We can't help ourselves. Occasionally, we talk about good and effective lawyers. More often, we talk about poor lawyers and poor advocacy. Often, the poor advocacy is rooted in incivility. I think that all judges will agree that incivility is just as bad advocacy. Why? Because it is distracting, wasteful and guaranteed to leave a negative impression with the judge”.³

Points are won by being personally attacked, and you standing your ground, saying little or nothing, and instead of responding to the attack, responding only to the issues.

- “So, what can you do when you encounter or witness incivility? If you are the target of incivility, frustration and anger are among the immediate reactions. The best strategy is to ‘kill with kindness’. Take a deep breath. Talk softly. Your reasoned and polite approach underscores the uncivil conduct. They might even pick up on the fact that their behavior [sic] is inappropriate. Probably not. Others, including judges, will.”⁴

Judges know some people blow out other people's candles so theirs burn a little brighter. Remember: **judges are just lawyers with a whistle**—they know what it's like to be a lawyer.

³ Hon. Danial Newton, *Incivility=Bad Advocacy*, *The Litigator*, December 2017, pp. 31-33.

⁴ *Ibid.*

As Justice Goudge (formerly Ont. C.A.) has said (quoting): “Never argue with an idiot; they’ll drag you down to their level, and beat you with experience”.

And, Judge Richard Mills: “... there are two very difficult things to achieve in this world. One is to make a good name for yourself. The other is to keep it.”⁵

And also, be respectful to court staff (actually, why not be respectful to *everyone*?): “Counsel who are rude and unpleasant with court staff are not doing themselves any favours either. The court services officers, registrars and reporters can be your best friends and provide you with some insight into your judge and help you with any courtroom protocol questions you may have. If you are difficult with court staff, trust me, we will hear about it.”⁶

No. 2: Incivility has a price

The principles of civility may not have the force of law, but reported cases indicate that advocates who prefer Rambo-style intimidation eventually do so at their peril.

In one case⁷, of the Ontario Superior Court gave a costs order of \$25,000 (inclusive of fees, disbursements, and GST) on the basis that “substantial indemnity costs are reserved for cases in which the court demonstrates its disapproval of the party’s conduct”, concluding “this is one of those rare cases”.

The motions court judge (Regional Senior Madam Justice H. M. Pierce) made the following points:

- A law clerk at a law firm filed an affidavit exceeding 40 pages, replete with scandalous allegations about the behaviour and personal life of a solicitor
- Also alleged the firm’s articling student was complicit in an alleged failure to practise professionally by a solicitor
- The inclusion of irrelevant and scandalous material in the record had the effect of greatly lengthening the proceeding
- It maligned the professional reputations of both a solicitor and student
- It is reprehensible to make irrelevant and scandalous allegations against a lawyer in a public record and persist in these allegations even when they have been rejected by the court
- “A lawyer’s reputation is delicate. He or she works for a lifetime to establish it. It can be shattered in a moment by careless or vengeful pleading...”
- “The reputation of a lawyer for integrity is fundamental to his ability to earn a living in a practice. It is his calling card in the community. When a lawyer’s reputation is damaged, so too is the personal credibility he brings to the court...”

⁵ The Bencher (Magazine of the American Inns of Court), September/October 2008.

⁶ Hon. Danial Newton, *Incivility=Bad Advocacy*, The Litigator, December 2017, pp. 31-33.

⁷ *1013952 Ontario Inc. et al v. Sakinofsky, Rosso, Lawyers Professional Indemnity Company, et al*, 2010 ONSC 411

*Deveau v. Fawson Estate*⁸:

- \$3250 costs payable by a lawyer personally
- for “...habitual failure to respond or acknowledge reasonable requests from opposing counsel; failure to communicate with the court; ... filing of an affidavit that does not meet the basic requirements of the *Rules* or the law of evidence...”

*Beatty v. Wei*⁹:

- costs ordered jointly against lawyer and client for “improper” conduct during a discovery
- objecting to proper questions
- improperly answering questions on behalf of the client
- telling counsel on the other side what questions to ask.

*Best v. Ranking*¹⁰:

- lawyer to pay costs of over \$84,000 personally under Rule 57.07
- and appeal costs of a further \$30,000.

*Saleh v. Nebel*¹¹:

- “[p]laying uncivil, tactical, inappropriate, old-school, trial by ambush games...”
- successful defendant is “deprived of a \$100,000 costs award to which it would otherwise have presumptively been entitled”.

*Sandhu v. Sidhu*¹²

- “special costs” to be paid by counsel personally
- for “improper conduct in the proceeding that is readily described as reprehensible because it was persistent and worthy of punishment” (and set out by the judge as (a) through to (j)).

*Catford v. Catford*¹³

- *Galganov v. Russell (Township)*, 2012 ONCA 410 quoted as setting out the “legal test for when costs will be awarded against a solicitor personally”.
 1. whether the lawyer’s conduct caused costs to be incurred unnecessarily.
 2. consider, as a matter of discretion and applying the extreme caution principle, whether, in the circumstances, the imposition of costs against the lawyer personally is warranted.

⁸ *Deveau v. Fawson Estate*, 2013 N.S.C.A. 54

⁹ *Beatty v. Wei*, 2017 ONSC 2922

¹⁰ *Best v. Ranking*, 2015 ONSC 6269

¹¹ *Saleh v. Nebel*, 2015 ONSC 3680. See also at Ont. C.A. & Div. Ct.: 2016 ONCA 948, 2018 ONSC 452 respectively.

¹² *Sandhu v. Sidhu*, 2023 BCSC 1860

¹³ *Catford v. Catford*, 2014 ONSC 133

- the court sets out (para. 12) three “failings” by “both counsel” on one side and three further by one of those two counsel.
- \$17,740.44 payable by both “within 30 days”.

*Smith v. Bruised Head*¹⁴

- a series of failings, including “repeatedly failed to comply with ... undertakings” and failure to appear at a scheduled Judicial Dispute Resolution meeting
- the lawyer “was provided an opportunity to consider the issue of costs against him personally”, and “concedes that a measure of costs was in order” (para. 14)
- \$700, \$350 to each of the two Applicants, and “the clerk’s office [directed to] draft a costs order...” (para. 19)

*Law Society of Ontario v. Guiste*¹⁵

- “engaged in professional misconduct when ... he failed to treat the court and others with courtesy and respect, failed to serve his client to the standard of a competent lawyer, and acted without integrity” (para. 1)
- \$225,000 costs, to be paid personally in equal yearly payments of \$45,000, interest on any overdue amount to accrue at 7% (paras. 118-120)

No. 3: Civility in communications

Every communication with opposing counsel can be an opportunity for employing strategic civility. Lawyers have long memories—judges too. Civility frames common expectations about trust and respect in seeking resolutions through dialogue.

As one lawyer said, without mutual confidence, there cannot be an effective meeting of the minds as a way to resolve social disputes and problems. Lawyers often wind up talking past each other or sinking to the lowest common denominator to strike a short term advantage. What’s ultimately important, and ultimately strategic, is doing what is right regardless of the circumstances and not being deliberately distracted from your goal by what the other side does.

No. 4: Avoiding acrimonious language

Do not attribute bad motives or improper conduct to opposing counsel unless it is relevant to the issue at hand and even then only when well-founded and provable.

In every single interaction – in your law day-job and otherwise – you have choices. Life doesn’t give you lemons; it gives you choices.

In Ontario the matters which formed the largest class of claims made against lawyers are from categories such as libel and slander allegations by lawyers against lawyers, claims that counsel should pay the costs of proceedings personally and claims arising from a breakdown in the solicitor/client relationship.

¹⁴ *Smith v. Bruised Head*, 2024 ABCJ 155

¹⁵ *Law Society of Ontario v. Guiste*, 2024 ONSTH 78

For example, the following letter cc'd to the other side's client may be defamatory:

"I notice that you have still not delivered a Statement of Defence on behalf of []. My friendly advice to you is that you are being negligent. I do not wish to take advantage of your apparent lack of knowledge. I will give you one last chance and give you some homework to do. Please refer to Rule 16.08 of the Rules of Civil Procedure and to any textbook on Civil Procedure on service of court process. You will no doubt realize that your insistence on "personal service" is in error.

The letter you wrote me copied to your client misrepresents what happened to the point of untruthfulness.

In any case you must deliver the Statement of Defence on or before []. If you fail to do so, you may regret the consequences."

No. 5: Setting a flexible tone

Make efforts to avoid scheduling conflicts. Agree to reasonable requests for scheduling changes. Do not attach unfair conditions. Remember: what goes around comes around. **You smack someone today, you'll get smacked later.**

When consistent with your client's interests, co-operate with opposing counsel in an effort to avoid litigation and resolve litigation that has already commenced.

Return telephone calls and answer correspondence promptly. Not because that's the proper thing to do but because the other lawyer, her client, your client, will report you to the Law Society. That means, even when you're vindicated, you have to respond to that complaint letter from the Law Society in a proper, full, and therefore time-consuming way.

Don't deliberately schedule the service of papers to cause disadvantage to your opposite number. Do not use any aspect of the litigation process, including discovery and motion practice, as a means of harassment or for the purpose of unnecessarily prolonging litigation or increasing litigation expenses.

What if you're dealing with I'll-never-change-my-mind-and-you-can't-make me? Or, a bit lower on the scale, am-just-plain-stubborn-and-I-know-it?

Try this:

- it's important to understand why people are often stubborn. For many, their beliefs and opinions are part of their identity. Challenging those beliefs can feel like a personal attack. It's like telling someone their favourite colour is wrong. They're not just defending a colour; they're defending a part of themselves.
- when you encounter a stubborn person, start by listening. Really listen. This doesn't mean you have to agree with them, but showing that you're willing to hear them out can lower their defences. It's like giving someone a microphone at a concert; they're more likely to sing than shout.

- next, find common ground. Even if you disagree on major points, there's usually something you can agree on. It's like finding a mutual friend at a party; it creates a sense of connection and can make the conversation smoother.
- and, when presenting your point of view, use "I" statements instead of "you" statements. For example, "I feel that..." instead of "You're wrong about..." This way, you're sharing your perspective without directly challenging theirs. It's like talking about the weather; it's a way to share information without making it a debate.¹⁶

No. 6: In the Court of Appeal, (or anywhere, really) let go the little stuff

Minor misstatements of the law or facts by the Court below aren't going to win your appeal. Don't set out just to whack the Court or judge below, rather identify major mistakes and criticise the rationale of the lower court's decision.

Don't whack the other side either - use courtesy. Advice given to Ed Bayda, former Chief Justice of Saskatchewan, during his first summer job (selling "waterless" cooking pots door to door): "**People buy things from people they like.**"

It's like making the decision not to swat that fly because the fly will fly off on its own. Save your energy for bigger stuff.

No. 7: Dealing with stress

Much has been written about how stressful the practice of law has become. One of the most effective ways of handling stress is simply to avoid creating unnecessarily stressful interactions with colleagues. Strategic friendliness is a way of doing this. Instead of wasting time trying to think of how best to create a detriment to the other side, consider what one lawyer has termed an "ethic of care" which is described as "considering the needs of all the parties involved as well as their relationships and attempting to find a solution that will satisfy everyone, rather than selecting a winner and a loser."

No. 8: Practical reasons why civility is important

The harder you argue, the less persuasive you are. The more you press, the more you hype, and the more you urge, the more sales resistance you create and the more you start to sound like the guy from *Fred's Water Beds* on Saturday night TV.

Real persuasion takes place when the reader thinks the conclusion is his or her own idea. Your job as an advocate is to help the judge find the right ideas herself that will lead her to decide the case your way. **Offer a reasoned solution to the judge instead of arguing:** here's why I am right and here's why you the judge must agree with me. **Change your overall strategy over to the following: here's the problem, but here's also a reasoned solution.** It works better - and you'll win more.

¹⁶ *How to Deal With Stupid People*, Kevin Carrillo, p.25, December 18, 2023

One lawyer has written that the most important trick about good advocacy is the trick of abandoning trickery. You can be the greatest legal orator the legal system has known, but if you're not credible it simply doesn't work. A child can win an argument with very simple language that innocently reveals the truth, or innocently reveals the logic. People win arguments because they are believed.

No. 9: Never respond in kind

As difficult as this may be, never resort to similar conduct, you open yourself to counter-charges or worse, damage your own credibility. Make a practice of preparing yourself in advance of the next communication and anticipate the situation. This will allow you to control your emotions and responses.

Remember the three Pig Rules:

Pig Rule # 1: Never wrestle with a pig—you only get dirty; and the pig enjoys it.



Pig Rule # 2: Never try to teach a pig to dance – it wastes your time; and it only annoys the pig.



Pig Rule # 3: Never try to teach a pig to whistle – it won't whistle; and eventually it'll get pissed off.¹⁷



¹⁷ Danny Shook, Brevard, North Carolina.

You remember Scotty on *Star Trek*? He'd put up a Force Shield around Starship Enterprise? That's what holding-back-patience is. Protects you from getting agitated by what folks say/do. Important, because you need to give your brain time to switch from *react* mode to *respond* mode (and sometimes respond mode is a big fat zero – you do *not* respond).

As the learned jurist Jay Z says “A wise man told me don't argue with fools. Cause people from a distance can't tell who is who”.¹⁸

Remember the obvious: “Clients, not lawyers, are the litigants.”¹⁹

To avoid responding the same way, simple technique I have used is not to respond directly to the incivility, not to make a statement, but rather be interrogatory; ask a question: “Why would you do that?”. They will not give you a straight answer of course, but the clear subtext to the question is this: I know what you are up to.

No. 10: Ten practical tactical tools

Prepare yourself strategically for confrontations with incivility.

Ten tactical tools to respond to incivility:

1. Insulted/baited

when opposing counsel insults or baits you in telephone conversations simply inform him/her that unless they agree to be civil, all future communications must be in writing.

2. The constant interrupting shtick

when the other side is constantly interrupting discoveries or cross-exams on an affidavit with silly objections (i.e. the know-it-all, think they have a Ph.D. in Everything), try to create a transcript describing the reasons you are prematurely adjourning until you can get a ruling on the appropriateness of the conduct of opposing counsel. You can also inform opposing counsel that you will be asking for costs. And, best way to deal with the know-it-all Ph.D. folks? Listen (i.e. do *not* interrupt – only gets worse – they *want* you to interrupt them); nod; move on. And if it's not them, it's their cousins – the Drama Queens and Kings. You *know* them. You could make a list. Everything's a crisis. Got one in your firm?

3. Needless abuse

when opposing counsel is being needlessly abusive, I just sit back and say, “Go ahead, get it off your chest. When you're finished, I've something to

¹⁸ Harvey Schachter, *How to fend off those toxic people*, Globe and Mail, January 11, 2015.

¹⁹ ABA 1908 Canons of Professional Ethics.

add.” **Patience is idling your engine when you feel like stripping your gears.**

4. **They get personal**

when your opposite number says you don’t belong in the practice of law, says you don’t know what you are doing, or insults the Law School where you received your degree; exude self-confidence and, with exaggerated humility, say something like “well in your mind you may be right, but I’m here to stay and it’s a problem you will have to learn to live with.” Your own self-esteem does not depend on affirmation from this person. **Accept that some days you’re the statue, and some days you’re the pigeon.**

5. **They talk over you**

when a lawyer consistently talks over you, wait until they take a breath, then say: “Listen, let’s make a deal: when you’re talking, I’ll listen and not interrupt; but when I talk, the deal is you too listen and not interrupt.” If, when they don’t (inevitably) abide by the deal, simply remind them (on the record).

6. **They shout over you**

when a lawyer I know (later a judge) gets shouted over in discoveries her standard response is to say: “Shouting your questions and your responses doesn’t give the force of your statement additional weight beyond that of additional noise. Madame Reporter we’ll take a 10 minute break so Mr. X may compose himself”, and walks out with the client. And the transcript so records.

7. **Anticipate the objections**

another lawyer I know tries to figure out in advance each objection he thinks the other lawyer will make during the discovery/exam-on-affidavit, whether his client is being examined or vice versa, whether the objections are polite or impolite, then types his detailed responses into his laptop, and when the objection comes, he reads it into the transcript. When the inevitable motion to produce/answer comes, the transcript always makes him look like a star.

8. **The “shocked and appalled” missive**

when you get a letter full of dictated invective, the person sending it to you wants you to be shocked and appalled and respond the same way. Don’t. Respond, saying only: “I am in receipt of your letter of [date].” Don’t sign it yourself, have your secretary initial it. **A personalized attack letter from an attack-dog lawyer has all the credibility of a disbarred lawyer on a book tour.** Don’t join the book tour.

9. When it gets extreme

respond to extreme hostility and baiting (as one Alberta judge did when called a “Motherf_____g b_____d” by an accused) with “Lucky guess”.

10. They are “none the wiser...”

and last, hope for the opportunity that once in your legal career another lawyer (or perhaps a judge) will say to you: “Mr./Ms. _____, I have read your material and I must tell you I am none the wiser”—just so you can respond: “Perhaps, your Honour, but certainly better informed.”

11. One more – How to deal with the illogical mind/argument?

“Dealing with people who argue illogically can feel like trying to catch a fish with your bare hands – slippery and frustrating. You present facts, and they slip through the gaps of their reasoning like water.

... First, it’s important to recognize that you’re not dealing with a lack of information; you’re dealing with a different way of thinking. An illogical argument is like a house built without a plan; it might look okay from a distance, but up close, it’s a mess. Your job is to point out the missing bricks and the shaky foundation, but in a way that doesn’t make the other person feel attacked.

One technique is to use simple questions. When someone makes an illogical statement, ask them to explain it. Say, ‘I’m not sure I follow, can you explain that a bit more?’ It’s like asking someone to explain the rules of a game.”²⁰

7. What if the incivility is coming from the Bench?

First piece of advice is from a judge:

“If you have been around courtrooms long enough, you know that judges aren’t immune to the incivility virus. I would like to think that most judicial bad behaviour is situational – a response prompted by poorly prepared counsel, time-wasting counsel, and counsel who do not know when to sit down. But, we are human too. The best advice I received early on from a judicial colleague was that you rarely get into trouble for what you don’t say”.²¹

The Alberta Court of Appeal²² wrote as follows:

²⁰ *How to Deal With Stupid People*, Kevin Carrillo, p.13, December 18, 2023

²¹ Hon. Danial Newton, *Incivility=Bad Advocacy*, *The Litigator*, December 2017, pp. 31-33.

²² *Destine v. Cloutier*, 2022 ABCA 331 (Justices Rowbotham, Pentelchuk and Feehan; appeal from Justice Malik).

“The father submits that the chambers judge’s numerous comments throughout the hearing demonstrated his personal negative feelings towards the father. ... This resulted in the chambers judge failing to consider the children’s needs and circumstances and to pre-determine the result.

The test for a reasonable apprehension of bias is whether “an informed person, viewing the matter realistically and practically ... and having thought the matter through” would conclude that “it is more likely than not that [the decision-maker], whether consciously or unconsciously, would not decide fairly”...

A review of the transcript reveals numerous instances of troubling comments made by the chambers judge. The comments are in some instances in relation to the father, some are made with reference to the father’s counsel, and some speak to the chambers judge’s own decision-making process.

The chambers judge stated that he “doesn’t have a lot of empathy” for the father and he had “zero, zero patience, zero patience, for a payor parent who says, I didn’t know.” He began his discussion of the father’s expenses by saying, “I will fall off this chair and roll down the street - and I live on a fairly lengthy street - if what...your client...is telling me...” As regards the overall quantum of the award against the father he said, “...it’s going to hurt. And it’s going to hurt and I’m not (sic) unapologetic about that.”

His first words to the father’s counsel, as she began her opening submissions, were that the facts were against her and he was going to give her “a very hard time today.” On four occasions he said to the father’s counsel that she was going to be mad at, or unhappy with, the chambers judge.

The chambers judge said more than once that he was unapologetic and that “if you need me to make a decision, I will make the decision. I’m not frightened of doing so.” Referring to the father, he said “He’s put himself in the situation that he’s in, you haven’t. And so, if he has anyone to blame frankly, it’s only himself. This was not a difficult decision.”

...Taken alone, none of these comments leads to the conclusion that the chambers judge did not remain impartial. Taken together they raise concerns, but we do not conclude that they satisfy the test to establish a reasonable apprehension of bias. However, they do warrant some comments.

We pause to ask whether as judges, we would have condoned these comments had counsel made them about the opposing party or opposing counsel. The comments were unnecessary, derisory, and disrespectful of both the father and his counsel.

A great deal is said and written about civility in the courtroom. Judges often express concern about the way counsel deport themselves in their dealings with the court, other members of the bar and litigants. It is our duty as judges to lead by demonstrating civility and we do so in the manner in which we run our courtrooms. When counsel speaks out of turn, we remind them to wait their turn. When counsel speaks personally and in a derogatory manner about opposing counsel or a litigant, we admonish them and remind them that those comments are unacceptable as officers of the court. We set the standard. It may be that in this recent age of virtual appearances, the decorum expected in a courtroom has been diminished. But we cannot let that alter our fundamental obligation to be civil and courteous.

The father was entitled to advance his position through his counsel. The court is entitled to ask questions and to probe the parties' positions. As judges we may signal that we have difficulty with an argument, and we may ask for assistance from counsel with our concerns. However, at all times we must remain civil and courteous so that the public has respect for our courts."²³

It goes the other way of course – almost all the time – the judge *is* courteous and civil. One judge has five “invaluable tips on combating incivility and making yourself look good in the process”:

1. If you're in court with an a-hole, don't point it out to the judge. The judge can pretty much see it for herself.
2. Behave well. The more professionalism and integrity you show, the greater the contrast with the other lawyer.
3. Surprise attacks are a bad idea. Don't be dragged down by the combative attitude of the other side.
4. Don't interrupt the judge.
5. Don't talk among yourselves and disregard the judge, you know, who is running the courtroom.
6. Arrogance and swagger are not a show of competence²⁴.

²³ Paras. 37-47.

²⁴ Justice Susan Healey, Ontario Superior Court, Barrie. Quoted in Gail Cohen *Be the better person*, Canadian Lawyer, March 5, 2012

But sometimes you just have to be practical: “Judges develop reputations as stern, crotchety and so forth. You just go in there with your helmet on”²⁵

8. Conclusion

My mother was right, when I was a kid: “Eugene, if you’ve nothing nice to say, don’t say it”. As a strategic response to incivility, it still works.

As Calgary lawyers Maureen Killoran K.C. and Anne Kirker K.C. have written: “We have evolved, [we] hope, from a place where the winner was the one with the biggest stick, to the loudest bully in the village, to trial by fire, to where we are today: the use of persuasion though reason.”

But also remember this: “Civility is a choice we make. We stay civil not because others always are, but because *we* are”.²⁶

9. And very last: the smart (or smarter?) comeback

We all wish for a smart comeback. By us of course. I have had a few court-related. Really good ones. But always 10-12 hours late, usually around 2/3a.m. when I wake up wishing I had said ABC or XYZ.

A Wall Street Journal article²⁷ from a few years ago has been really helpful, and I have used several with other counsel (and also used several more in my non-law life).

Some basic helpful and practical take-aways from the article:

- “There’s an art to the comeback line. The best ones put the offender on notice and allow us to stand up for ourselves or someone else.”
- “It can be good to pause, rather than blurt out the first thing that comes to mind.”
- “A good comeback line rebalances the power in the conversation. It allows us to be hard on the problem but respectful of the person.” (quoting Selena Rezvani)
- A handy phrase: “That’s a strange thing to say out loud”.
- When asked a nosy/inappropriate question, respond with a question of your own: “why do you ask?”
- Replying to a person who is “just plain nasty”: “Bad day, huh?”
- When someone is being rude, Karena Schwenk responds with “Good for you”. She had confided to a friend that she (Karena) was getting a divorce, and the friend responded with “Well, my marriage is better than ever”, to which Karena said “Good for you.”
- No response is OK. “Silence can be effective. There’s power in a raised eyebrow, a pointed look, or by ending the conversation.” (quoting Andrea Wachter).

²⁵ Wendy Davis, *Bullying From the Bench*, ABA Journal, March 2019.

²⁶ Jennifer Breheny Wallace, *The Costs of Workplace Rudeness*, Wall Street Journal, April 18, 2017, quoting Daniel Buccino.

²⁷ Elizabeth Bernstein, *What You Wished You Said: The Power of a Great Comeback Line*. WSJ, Sept. 13, 2023

- Some go-to lines for different situations:
 - short and sweet: “Oh.” “Got it.” “Mmm.” (Psychologists call these responses the “gray rock” method, because it’s deliberately meant to be dull and boring). Works particularly well with people trying to provoke you.
 - direct approach: “I don’t feel comfortable about this.”
 - asking someone to repeat what they said can (sometimes) make them stop and think about it: “I’m sorry, what did you say?”
 - hold up a mirror: “I hope your day gets better.”

End Quote

Nelson Mandela/Carrie Fisher (not clear who):

*“Resentment is like drinking poison,
and waiting for the other person to die”.*

Addendum

I received the following practical suggestions from other lawyers by email/letter on the issue of civility that I think is useful to add here, to see how other colleagues have dealt with the problem in a pragmatic way. Reproduced with permission.

1. The name of the incivil lawyer below is changed to Mr. Smith:

“I couldn’t agree more with your point that civility can be used tactically. It also makes life much more enjoyable not to have to squabble interminably with opposite counsel.

I will always remember Gerry Morin’s [later Mr. Justice Morin] piece of advice on civility. I had a fatal accident case years ago where one of my clients was killed while standing on the shoulder of the road by a client whose defence lawyer was my old nemesis Mr. Smith. [He had] sent me a letter telling me my claim was “frivolous and vexatious” and I should consider a “change of venue to Disneyland and a guest appearance on the Gong Show”.

I was much younger then with a much lower outrage threshold. What I wasn’t going to do to him – Law Society, demand apology yadda, yadda. The day I received the letter I had a call from Tom Conway about another file and I ranted to Tom about the letter and my plans to whack away at the *. Tom told me the story of a similar letter he had received from the same Mr. Smith – Tom had actually never heard of a lawyer getting the Gong Show AND the Disneyland reference in the same letter – a bit of a badge of honour.

Anyway, Tom had written an excoriating draft letter to Mr. Smith demanding apology, dastardly consequences etc. He took it in to Gerry Morin to review before he sent it out and Gerry ripped the letter in half before Tom’s startled eyes. He explained patiently to Tom that was not the way to deal with Mr. Smith. The right way to deal with him and like-minded litigators was to completely ignore the provocative remarks and under no

circumstances should you refer to it in writing, or in conversation. Just ignore it as if it never existed and respond politely and professionally to the substantive issues in the letter.

I accepted Gerry's derivative advice and it works like an absolute charm. I never once lost my temper with his eminence or other provocative counsel since then."

Barry Laushway, *Laushway Law Office*, Prescott, Ontario (now deceased).

2. "Mr. Laushway's/Gerry Morin's advice reminded me of Fraser Goddard's advice to me in a similar situation. I prepared a sharp riposte to a sneer (in writing) I had received. I showed it to Fraser. He told me that it was a fine answer, and it was probably a good idea to write it. However, I should on no account send it because "you can't win piss-fights with skunks". When I have to expurgate that advice, I just say you can't win fights with skunks. They're stinkers, and you get some on ya. There is a lawyer in Edmonton, quite senior at the bar, who was renowned for his rudeness when I was a junior lawyer. On the phone, he never said good-bye, he just hung up, often in the middle of what his caller was saying. He did builders' liens, so I had the privilege of having many files with him. To remedy the situation, I started being as friendly to him as I could possibly be. I chatted with him in elevators, asked him about his holidays, etc. etc. Before long, he reciprocated quite warmly. And there was no more rudeness. I believe I became the only friend he had, or ever had had, among lawyers with whom he practiced. ... I have repeatedly and very self-consciously adopted a similar very friendly demeanour with lawyers who have reputations for being difficult to deal with. Not very many people are nice to them in any given day. It has paid off."

Elsa Rice, K.C., *Scorgie Wilson Rice*, Edmonton, Alberta

3. "... your paper made me remember the early days (1970s) in San Francisco as a young woman lawyer, a bit sheltered and shy in spite of having graduated from Berkeley. I entered a deposition once and the opposing counsel, after asking if I was the court reporter, tried to kiss my hand. At the time, I found it awkward and weird. I also noted that he did not know how to do that properly (the guy's lips are NOT supposed to actually TOUCH the lady's skin; it is a gesture). If I had known THEN, what I know NOW, I would have halted right there in front of everyone and given him lessons in correct hand-kissing. Over and over. Had I been sufficiently coarse, I could have invited him to kiss my posterior part as well ... but then, that would not have been civil, would it? The fact today, at least in my US experience, is that only a minority of lawyers are actually raised with good manners. Dog-eat-dog and jungle survival tactics take over. The goal of many is to win, to wear the other side down with paper. Sadly, lawyers in the federal government do more of this than many others, having deep resources.

Oregon is far more gentle than California or New York. We talk about that among ourselves here. One reason is that this is a small state and Portland is a small town. What goes around, comes around. If one gets the reputation of being a jerk, well-mannered opposing counsel will not be inclined to grant favours, such as stipulated extensions, when requested or needed. One will not get referrals in conflict of interest situations. One will not be sought after by in-house counsel. It is true that the most successful lawyers here follow the rule of civility. To do otherwise demeans the profession and is a disservice to

Eugene Meehan K.C., Supreme Advocacy LLP, Ottawa

the client, needlessly exacerbating tensions and emotions within the dispute resolution process, and wasting economic resources. Preaching the higher expectation as the norm does have an impact – so that the tactics you describe will be seen for what they are: the unprofessional conduct and rantings of inferior jerks and dweebs who believe they must fall back on such games and foul play in order to “win”.”

Carol A. Emory, *Emory Law Group PC*, Portland, Oregon.

4. “I am a tax litigation counsel for the Province of BC. As such, I defend tax assessments. Some counsel (usually counsel who are not tax counsel), adopt their client’s persona in their initial dealings with me and the client (and hence the lawyer) often harbours a deep anger at the tax authority. These lawyers begin their litigation by taking strong positions on timing and rules of court and use strong and often intemperate language in their letters and telephone communications. I do not respond in kind but maintain a calm and civil approach. This invariably has the effect, as Barry Laushway’s story suggests, of neutralizing the counsel’s approach. In fact, a few such counsel have become outright sycophantic.”

Hunter Gordon, Sales Tax Lawyer, Victoria, BC

5. “I am an associate with Laurie Allen and she is a huge proponent of the civility strategy. It is amazing how a civil response completely disarms a boorish adversary. Laurie is a master of the technique.”

Gay M. Benns, *Moe, Hannah & McNeill LLP*, Calgary, Alberta.

6. "I agree with your assertion that I don't need to seek validation from opposing counsel. To thine own self be true. Law is a funny thing, with many people who seem to be insecure in their place in the universe, and lawyers often tend to see everything as a competition. I was reminded of this (and of the value of not joining the party) at a bar dinner several years ago. There is an annual dinner where the articling students are introduced to the Bar. The repartee often takes the form of taking shots at each other. In other cases it takes the form of rather merciless teasing of the students (which is a particularly bad form of predation on the weak, in my view). Not that it is offensive in any way, because it is restrained, but there are times it just strikes me as genteel name-calling. Without really thinking about it, I adopted a rather self deprecatory approach, telling some funny stories on myself, and then introduced my student, by giving him a pat on the back. Never really thinking about it, I was surprised afterward when one of my partners approached me and told me that the female members of the bar had almost uniformly remarked on the fact that I was the only speaker who hadn't taken the time at the podium to take a shot at someone else.”

Kim Anderson, B.C. Ministry of Attorney General, Victoria, B.C.

7. “Barry’s story reminds me of a lawyer’s response I saw years ago (not sent to me or my firm), written in answer to a provocative, uncivil letter from another lawyer. On expensive letterhead, after all the usual formal date, name, address, re: lines, it succinctly stated: “Well, excuuuusssse me...” Signed off with “yours very truly”.”

Elisabeth Sachs, Barrister & Solicitor, Orangeville, Ontario.

8. “I have a note stuck to the window ledge next to my computer to remind me that a thoughtful response is always better than a reaction. This was pasted there after hearing a quote attributed to Melody Beattie: “Much of what we react to is nonsense.””

Laurie Gordon, *L.M. Gordon Law Office*, Nanton, Alberta.

9. “Lawyers should note that they meet other lawyers on the way up and on the way down. ... you meet other lawyers and must be able to negotiate with them at all times. ... since 98% to 99% of most lawsuits get settled without going to Court, it is especially important to keep good lines of reasonable communications open.”

Emanuel Sonnenschein, Q.C., *Sonnenschein Law Office*, Saskatoon, Saskatchewan.

10. “I am old enough to remember the day when an older lawyer with much senior experience who was opposing me on an estate matter, and addressing me as Mrs. V. (as I was then known) kindly, and ever so politely, pointed out several errors I had made in an estate matter, that would have been to my client's detriment. He did it so diplomatically that it took me some minutes to figure out that he was actually pointing out my mistakes to me so I could fix them, instead of taking advantage of me and them. This, I understand was his duty then and still is our duty today. But do you think anyone today ever points out his or her opponent's errors?”

Nadia Senyk, Corporate Counsel, Canadian Red Cross, Ottawa, Ontario.

11. “I read Barry Laushway’s story with interest. Over the course of my 24 years of practising law, I have been told to “shut up” by counsel considerably senior to me and called a communist on a couple of other occasions. I learned to smile (only when on the phone, as I agree with Mr. Justice Morin’s advice to show no reaction) and take comfort that counsel has no persuasive logic or reasoning to rely upon. Without exception, those cases resolved favourably for my client. When confronted by rude behaviour, I remind myself that discourteous behaviour conveys weakness and fear. Civility conveys strength and confidence.”

Dale K. Beck, Provincial Mediation Board and Office of Residential Tenancies, Regina, Saskatchewan.

12. “It was great to read Barry's story, which I remember well because I really took Gerry's advice to heart. His was one of the best mentoring tips I received in my early days of practice. I have tried, not always successfully I confess, to follow his advice every day of my professional life since. It is no coincidence, I'm sure, that the very same advice made the very same impact on Barry. I estimate that my exchange with Gerry years ago took less than two minutes, but here his advice shows up again a dozen years later and is disseminated by you to an even larger audience. What I have noticed over the years about practitioners like Gerry and Barry is that, by refusing to take the bait and by maintaining high standards of civility and professionalism, they become the tide that lifts all boats. One cannot help but respond in kind when ambushed by unrestrained, uncompromising civility. A postscript: The ways of “Mr. Smith” eventually caught up to him. He later resigned from the profession. No one was sad to see him go. A needless ending for him. Ironically, “Mr. Smith” and his demise are a cautionary tale to those of us who occasionally draft scathing

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rebuttals to imagined adversaries: remember the advice of Gerry Morin and the end of "Mr. Smith", and toss the angry intended missives into the blue box where they belong.”

Tom Conway, *Conway Baxter, LLP*, Ottawa.

10. Select Bibliography

Law Society of Alberta, *Civility Best Practices* (October 2024)

Leah Teague, *Civility Matters: Why Law Schools Must Teach Students to Disagree Without Being Disagreeable* (2024) Baylor Law Review (draft)

Julie Sobowale, *New report recommends mentorship and regulatory enforcement to improve civility and professionalism*. Law Times, Dec. 13, 2023

Toronto Lawyers Association, *Report on Civility and Professionalism in the Legal Profession*, Dec. 2023

Rachel Feintzeig, *Don't Be a Jerk at Work. (But Don't Be Too Nice Either)*. WSJ, July 30, 2023

John Hyde, *News Focus: Guidance on 'mindful' litigation seeks to address mental health issues*. Law Society Gazette, Mar. 10, 2023

Tessa West, *How to Deal with Office Jerks*. WSJ, Feb. 19 2022

Jemma Slingo, *'Sense of how to behave' at risk, says High Court Chancellor*. Law Society Gazette, Mar. 15, 2021

Elizabeth Bernstein, *How to Handle a Jerk*. WSJ, Aug. 18, 2020

Barb Cotton & Christine Silverberg, *Being rude in court: Disciplinary sanctions*. The Lawyers' Daily, Aug. 5, 2020

Barb Cotton & Christine Silverberg, *Being rude in court: Crossing the Line*. The Lawyers' Daily, July 29, 2020

Ross Todd, *Expletive-Laden 'Negotiating Tactic' Could End in Sanctions for SoCal Lawyer*. Law.com, Dec. 5, 2019

David L. Hudson, *I Pledge to be Civil*. ABA Journal, Practice Matters, Sept. – Oct. 2019

Wendy Davis, *Bullying From the Bench*. ABA Journal, Mar. 2019

When the Badly-Behaved Party is Opposing Counsel (no author indicated), National Self-Represented Litigants Project, Feb. 18, 2019

John "Sean" Doyle, *Creating a Culture of Civility in the Practice of Law*. ABA Law Practice Today, Jan. 4, 2019

William McGurn, *Playing the Civility Card*. WSJ, Sept. 10, 2018

Alice Wooley, *Does Civility Matter?* SLAW, Sept. 5, 2018

Eugene Meehan K.C., Supreme Advocacy LLP, Ottawa

- Anne T. Donahue, *Cleansing Your Life of Toxic People*. Ottawa Citizen, Aug. 3, 2018
- Cheryl Suann Williams, *Smart, practical ways to hand high conflict between lawyers*. Lawyers' Daily, July 20, 2018
- Lee Akazaki, "A Trial Is Not a Tea Party", *Is What They Will Say*. SLAW, June 3, 2018
- Alex Vakula, *Dealing With Difficult Lawyers*. Arizona Attorney, President's Message, May 2018
- Hon. Danial Newton, *Incivility = Bad Advocacy*. The Litigator, Dec. 2017, pp. 31-33
- Jennifer Breheny Wallace, *The Costs of Workplace Rudeness*. WSJ, Aug. 18, 2017
- Robert Sutton, *How to Survive a Jerk at Work*. WSJ, Aug. 10, 2017
- Elizabeth Bernstein, *Find Compassion for Difficult People*. WSJ, July 17, 2017
- Steven Benmore, *Opposing Counsel versus My Friend*. Benmor Family Law Group, June 2017 Newsletter
- Christine Porath, *Civility at Work Helps Everyone Get Ahead*. WSJ, Nov. 23, 2016
- Peter S. Poland, *King Arthur, Rambo, and the Origins of Civility at the Bar*. ABA Litigation, Winter 2016
- Maureen Killoran K.C. & Anne Kirker K.C., *Aspiring to the Highest Standards of Civility*. CBA Alberta, Law Matters, Spring 2016
- David Layton, *Fighting Fair*. The Advocates' Journal, Spring 2016 (book review, *Fighting Fair: Legal Ethics for an Adversarial Age*, by Allan C. Hutchinson, 2015)
- David Bilinsky, *How to Deal with Difficult People*. SLAW, Dec. 3, 2015
- Ross McCammon, *How to Deal with Assholes*. Esquire, Nov. 2015, p. 42
- Harvey Schachter, *How to fend off those toxic people*. Globe and Mail, Jan. 11, 2015
- Janice Tibbetts, *Keeping a civil tongue: How to win cases and impress people*. CBA Practice Link Bulletin, Oct. 2014
- Vivian Rachlis, *Dealing with Difficult People*. The Legal Foundations, CBA Legal Conference, Aug. 15, 2014
- How to deal with bullies* (no author indicated), CBA National Magazine, Jan./Feb. 2014
- Amy Salyzyn, *A Tale of Two Regulators: When Courts and Law Societies Collide*. SLAW, Oct. 8, 2013

Chris Hannay, *Civility: It's the glue that holds society together*. Globe and Mail, July 12, 2013

Omar Ha-Redeye, *Civility Is an Innate Part of Our Biology*. SLAW, July 7, 2013

Jacque Miller, *A New App Allows You to Send that Message to all the Inconsiderate Boors in your Life*, Ottawa Citizen, June 20, 2013

Yamri Taddese, *LSUC Expanding Civility Protocol to Tribunals*, Law Times, May 6, 2013

Erin Walkinshaw, *Chic Critique: Dressing Up Professional Criticism*. SLAW, April 11, 2013

Dan Pinnington, *Incivility: Practical Consequences for You and Your Client*. SLAW, Mar. 4, 2013

Hon. Sean Dunnigan, *Top 10 Tips on Courtroom Civility*. Manitoba Bar Association 2013 Mid-Winter Conference

Christine Porath & Christine Pearson, *The Price of Incivility*, Harvard Business Review, The Magazine, January-February 2013

G.M. Filisko, *You're Out of Order! Dealing with the costs of incivility in the legal profession*. ABA Journal, Jan. 2013, pp. 33-40

Andra Barmash Greene, *No Good Deed Goes Unrewarded: Why Professional Courtesy Advances your Client's Cause*. ABA Litigation, Winter 2013, pp. 28-33

Yamri Taddese, *Trial judges better suited to regulating civility: panel*. Law Times News, Dec. 17, 2012

Justice Francois Rolland, *Quebec Superior Court, Manners May Count More in Ottawa, Where Diplomacy Rules*. Lawyers Weekly, December 14, 2012

Lindsay Scott, *Dealing with incivility from senior counsel*. Canadian Lawyer Magazine, Nov. 19, 2012

Robert P. Sokalski, *Always Play Nice in the Sandbox*. Excerpts from The Lawyers Weekly, Oct. 19, 2012

Geoff Kirbyson, *Always play nice in the sandbox*. The Lawyer's Weekly, October 19, 2012.

Omar Ha-Redeye, *Dealing With the High Conflict Personality in Practice*. SLAW, July 22, 2012

Clint Bolick, *Confronting the Courthouse Bullies*. Arizona Attorney, June 2012, p. 60

Leslie W. Smith, *Civility in Practice; Exercising the Fruit of the Spirit*. Christian Legal Journal, Summer 2012, pp. 14-16

Gail Cohen, *Be the better person*. Editorial, Canadian Lawyer Magazine, Mar. 5, 2012

Becky Beaupre Gillespie, *No Jerks*. ABA Journal, March 2012, pp. 25-26

Daniel Naymark & Jennifer Ip, *Judicial Sanction of Uncivil and Unprofessional Conduct*. The Advocates' Society 2012 Symposium

Nora Rock, *The Claims Consequences of Lawyer Incivility*. SLAW, Oct. 3, 2011

Dealing with Jerks – What Goes Around Comes Around; and Ten Tips For Dealing With Jerks. ABA Section of Litigation, Fall 2011, pp. 19-20, and back page

Edward Greenspan & L. David Roebuck, *The horrible crime of incivility*. Globe and Mail, Aug. 2, 2011

Charles Gillis, *The benefits of not being a smug lawyer*. Canadian Lawyer, April 8, 2011

Law Society of Upper Canada, *Civility*, Ontario Reports, Nov. 19, 2010 (4 pp.)

(Justice) Carole Curtis, *How to Handle Difficult Clients*, Law Practice, July/Aug. 2010 pp. 40-42.

Mark Hunter, *Ever Notice That People Do Business With People They Like?* SLAW, July 19, 2010

Thomas Claridge, *Incivility Report tabled*. Lawyers Weekly, June 11, 2010

Thomas Claridge, *Treasurer's Incivility Report*. Lawyers Weekly, June 11, 2010

Jeff Gray, *Will making lawyers civil make them soft?* Globe and Mail, June 8, 2010

Jennifer Baic, *The Difficult Client*, OTLA The Litigator, June 2010, pp. 77-78

Dan Pinnington & Norman J. MacInnes, *What Goes Around Comes Around: The Importance of Being Civil*. The Litigator, June 2010, pp. 63-65

Philip Slayton, *There can be too much civility*. Canadian Lawyer, May, 2010, pp. 18-19

Leo Singer, *Civil Unrest? Drawing the line between vigorous advocacy and just plain rudeness*. CBA, National Magazine, April–May 2010, pp. 27-31

Hon. Stephen Goudge, *The Judicial Role in Lifelong Learning of Professionalism*. Arctic Obiter, May 2009, pp. 16-17

Robert W. Thompson, *Barristers' Etiquette and Ethical Duties*. Arctic Obiter, May 2009, pp. 9-15

Eugene Meehan K.C., Supreme Advocacy LLP, Ottawa

- Alice Woolley, *Does Civility Matter?* (2008) 48 Osgoode Hall L.J. 175
- Frederick Alimonti, *Dealing with the Difficult Adversary*. ABA Litigation, Fall 2008, pp. 37-42
- Judge Richard Mills, *Surviving Litigation with Civility*. The Bencher (Magazine of the American Inns of Court), Sept./Oct. 2008
- Anne Marie Owens, *Loss of Civility*, National Post, Mar. 24, 2007.
- Wendy Matheson, *Civility: Ten litigators to watch out for*. The Advocates Society Journal, June 2006, pp. 17-18
- Douglas Mah, *Choose Civility*. CBA National Magazine, April – May, 2006, p. 58
- Justice Colin Campbell, “*Civility*” *Revisited – A Matter of Expectations*, O.T.L.A. The Litigator, Fall 2004 pg. 27.
- John Simonett, *Keep Justice Civil*, Trial, pg. 48 (July 2003)
- LawPro Special Report, *Aggressive Behaviour, Poor Communication Prompt Claims, Speak out and I May Eat Your Words*” (June, 2003)
- David Gambrill, *Lawyer dinged with costs for uncivil conduct*, Law Times February 3, 2003 (page 1-2)
- David W. Scott Q.C., *Relations between Trial Lawyers: A Code of Civility*, County of Carleton Law Association, Chateau Montebello, Quebec, November 3-4, 2000 (Civil Litigation Updated 2000)
- Michael Eizenga, *Citizenship in the Legal Profession: Civility as an Instrumental Value in Self-Governance*, Civility in the Legal Profession Conference, Advocates Society October 31, 2000
- Robert P. Sokalski, *Civility in Practice* Manitoba Bar Association Headnotes & Footnotes August/September 2000 edition Volume XXXII No. 7.
- Ronald G. Slaght, Q.C., *Whatever Happened to Civility*, The Advocates’ Brief, Vol. 11, No. 10, July/August 2000
- R. Terri Mandel, *Beyond Zealous Advocacy: Harassment and its Remedies*, Bench & Bar of Minnesota, April/May 1999 (<http://www2.mnbar.org/benchandbar/1999/apr99/harassment.html>)
- Robert W. Ritchie, *Civility in the Practice of Law: Must We Be “Rambos” to Be Effective?* Bencher's Advisory, August 1998
- Stephen L. Carter, *Just Be Nice*, Yale Alumni Magazine May 1998. (http://www.yalealumnimagazine.com/issues/98_05/Stephen_Carter.html).
- Eugene Meehan K.C., *Supreme Advocacy LLP, Ottawa*

Sandra Day O'Connor, *Professionalism*, 76 Washington University Law Quarterly Spring 1998 (<http://www.wulaw.wustl.edu/WULQ/76-1/761-02.html>)

Gerry Spence, *How to Argue and Win Every Time: At Home, at Work, in Court, Everywhere, Every Day*, St. Martin's Press, (May, 1996)

The Advocates' Society, *Principles of Civility for Advocates*, (www.advsoc.on.ca)

Standards of Civility, New York Law Journal.
(<http://www6.law.com/ny/links/standard.html>).

Hon. Carole Curtis, *Dealing With Difficult Judges*. Have copy of paper, unable so far to source citation (not marked thereon)

Heidi K. Brown, *Defusing Bullies*. ABA Advocacy, Practice Matters (date unavailable)

Gail Cohen, *The murkiness of judging civility*. Canadian Lawyer, Editorial