RAISING THE BAR: MAXIMIZING CIVILITY IN ALBERTA COURTROOMS

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This article examines the apparent lack of civility among the members of the profession of law. The author presents several examples of incivility among law students, lawyers, and judges, and emphasizes the need for increased civility to protect the integrity of the profession. This article also explores the respective roles of law schools, the bar, and the bench to effect positive change. The author concludes that a partnership of efforts is required to achieve maximum civility and highlights various means by which this goal can be reached.

Cet article examine le manque apparent de civilité chez les membres de la profession juridique. L'auteur donne plusieurs exemples du manque de civilité chez les étudiants en droit, les avocats et les juges et souligne l'importance de faire preuve d'une meilleure civilité afin de protéger l'intégrité de la profession. Cet l'article explore aussi les rôles respectifs des écoles de droit, du barreau et du tribunal dans le but d'instaurer des changements positifs. L'auteur conclut que des efforts concertés sont nécessaires pour obtenir un minimum de civilité et il indique plusieurs moyens de réaliser cet objectif.

> In all intercourse with my professional brethren, I will always be courteous. No man's passions shall intimidate me from asserting fully my own or my client's rights; and no man's ignorance or folly shall induce me to take any advantage of him; I shall deal with them all as honorable men, ministering at our common altar. But an act of unequivocal meanness or dishonesty, though it shall wholly sever any personal relation that may subsist between us, shall produce no change in my deportment when brought in professional connection with them; my client's rights, and not my own feelings, are alone to be consulted.[1]

I. INTRODUCTION

> Civility amongst those entrusted with the administration of justice is central to its effectiveness and to the public's confidence in that system.[2]

No member of the judiciary or the bar would deny that civility in the courtroom is of utmost importance. Law students would equally acknowledge their understanding that the courtroom is a place where decorum should preside, where justice is done and appears to be done. Yet, tales of intemperate judges and discourteous lawyers provide routine fodder for conversation in the courthouse cafeteria and the law student's lounge; in fact, "swapping stories of outrageous conduct is a favorite lawyer pastime."[3] Complaints about courtroom actors who behave badly circulate, but rarely seem to culminate in more than a senior lawyer's lament of "gentler times," a warning to junior lawyers to bear the poor behaviour, or defensive commentary from a judge concerning the necessity of judicial independence. Few of the players appear willing or capable of doing anything about the problem. Indeed, there is a puzzling, systemic tolerance of uncivil behaviour: "[w]e act like civility and ethics

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1 David Hoffman, "Resolutions in Regard to Professional Deportment," *A Course of Legal Study*, 2d ed., (1836) Resolution V at 752-75.

2 The Advocates' Society, *Principles of Civility*, online: The Advocates' Society <www.advsoc.on.ca/civility/principles_tex.htm> [*Principles*].

3 Justice Matthew B. Durant, "Views from the Bench: Civility and Advocacy," (2001) Utah Bar J. 35 at 35.

are the deceased at an Irish wake: Their presence is required, but nothing is expected of them."[4]

Popular and legal media have noted an apparent increase in bad behaviour amongst members of the bar and bench.[5] The 2002 Nova Scotia Barrister's Society Task Force on Professional Civility confirms that "incivility is becoming part of the culture of the profession."[6] Perhaps most professionally damning of all is that court transcripts permeated with incivility are not difficult to find. For example, in *Marchand v. The Public General Hospital Society of Chatham*, the Ontario Court of Appeal deplores the following actions of defence counsel toward opposing counsel and a witness at trial:

> [Defence counsel] Mr. Tait accused Mr. Wunder of "a complete lack of integrity"; of cheating and intentionally defying the rules of practice; of using the right to object to cross-examination "to suggest answers to every witness who has come into this courtroom"; of abuses of the Rules of Civil Procedure; of using and abusing solicitor-client privilege as a "mask for deception", to "conceal misconduct", "as a manipulative device", "to conceal the devices by which the evidence of witnesses is manipulated" and as a "shield for deceit"; of "manipulating" the evidence and facts; of deliberately misinforming an expert witness; of "flatly lying" to the court; of deliberately misleading the court, showing contempt for the court, defying and deceiving the court about the evidence of Dr. Whyte; of "trickery" and "sleight of hand"; and of committing an outrage on the court. Mr. Tait told the trial judge that he (Mr. Tait) [was] wrong to assume Mr. Wunder was competent and would comply with the Rules of Civil Procedure, and he even suggested that Mrs. Marchand made a mistake in choosing Mr. Wunder as her counsel.[7]

The Court also noted that:

> (a) During Mrs. Marchand's first day of testimony, Mr. Tait commented to Mr. Liswood "she's a liar". This unfortunate comment was said loud enough for Mrs. Marchand to hear it and loud enough for the court reporter to record it. However, the trial judge did not hear the comment and, once apprised of it, he neither condoned nor accepted it.
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> (b) The appellants submit that Mr. Tait and Mr. Liswood taunted Mrs. Marchand with deprecating facial expressions from the counsel table. The record suggests that defence counsel rolled their eyes, smiled and laughed out loud during parts of Mrs. Marchand's cross-examination.[8]

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4 Alan G. Greer, "One-Way Streets: Making a Case for Civility" (2002) 10 Nev. Law. 32 at 32.

5 See, for example, Ann Kerr, "No defence for lawyers' bad behaviour: many insiders feel incivility on the rise, partly because of aggressive clients" *Globe and Mail* (30 December 2002) B10. David Gambrill, "Lack of civility inside and outside courtroom" (2002) 13 L.T. 3.

6 Nova Scotia Barristers' Society Task Force on Professional Civility, *2002 Report*, online: Nova Scotia Barristers' Society <www.nsbs.ns.ca/publications/civ.pdf> [Task Force on Professional Civility]. See also Gambrill, *ibid.*; John Honsberger, "Civility Within the Profession" (1991) 25 Upper Canada Law Society Gazette 176; Barry Vogel, "The civility initiative: Time for action," *Benchers' Advisory*, (February 2000) at 13, online: Law Society of Alberta <www.lawsocietyalberta.com/pubs_policies_reports/benchers/63/15.asp>; and Working Group on the Definition of Professionalism, *Defining Professionalism* (Ontario: Chief Justice of Ontario Advisory Committee on Professionalism, (draft October 2001, revised December 2001), online: Law Society of Upper Canada <www.lsuc.on.ca/news/pdf/definingprofessoct2001revdec.pdf>.

7 (2000), 51 O.R. (3d) 97 at para. 136 [*Marchand*].

8 *Ibid.* at para. 152.

This stark description illustrates the depths of incivility. Yet, the occurrence of even one of these behaviours, in any court, by either judge or lawyer, can be equally and potentially devastating to legal practice and professional reputation. Allan Greer puts it this way:

> Do you believe these actions instill trust and confidence in our clients? Do you believe that they look on the system favorably if the actions of the participants would be something they would not permit their children to do? We, as lawyers, must do all that we can to further the trust and confidence of the public in our profession and our legal system.[9]

Although uncivil behaviour is by no means limited to the courtroom, its presence in that public forum serves to showcase the problem, and its negative impact on the integrity of the legal profession and the justice system. This article explores how the tone of justice could be improved in Alberta courtrooms.[10] It will examine the respective roles of law schools, lawyers, and judges in effecting positive change, and attempt to demonstrate that a partnership of efforts from the bar and bench is critical to raising the threshold of acceptable conduct, and achieving maximum civility in the courts.

II. LAW SCHOOL

> [M]any law students consider that legal ethics and civility are oxymorons. It appears that law students feel in order to fulfill the duty of zealous representation they must be as close to the edge of acceptable behaviour as possible.[11]

It is possible to go through law school without ever setting foot inside a courtroom. Some students gain exposure through observing court proceedings for course requirements, mooting, or volunteering for legal clinics. All students hear anecdotes of uncivil courtroom behaviour, usually without the benefit of a proper context or an experienced moderator; such tales are inevitably reinforced by depictions of courtroom activity on television. Judge Gerber suggests that many law school trial procedure courses contribute to unprofessionalism by instilling "a predilection for victory over truth," in students that "bestows on each pupil a bursting bag of tricks more like that of vaudeville actors than officers of the court."[12] Misconceptions about the kind of behaviour that is expected of lawyers and judges in court must be dispatched in law school:

> We need to ensure that students who come to law school with lofty ideals leave with those same lofty ideals and that students who attend law school for less noble reasons are exposed to these lofty ideals throughout their law-school curriculum. The only way to do this is to make professionalism an integral part of the law school experience.[13]

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9 *Supra* note 4.

10 Norman L. Greene, "A Perspective on 'Temper in the Court: a Forum on Judicial Civility'" (1996) 23 Ford. Urban L.J. 709 at 709.

11 Task Force on Professional Civility, *supra* note 6 at 20.

12 Rudolph J. Gerber, *Lawyers, Courts, and Professionalism: The Agenda for Reform* (Connecticut: Greenwood Press, 1989) at 117.

13 James A. George, "The 'Rambo' Problem: Is Mandatory CLE the Way Back to Atticus?" (2002) 62 La. L. Rev. 467 at 495, citing Deborah L. Rhode, "The Professional Responsibilities of Professional Schools: Pervasive Ethics in Perspective," in American Bar Association, *Teaching and Learning Professionalism: Symposium Proceedings* at 25, 26 (1997).

The Task Force on Professional Civility recommends the development of "specific civility components for the law school curriculum, the bar admission course, the articling program, and continuing professional education."[14] Students must be instilled with a sense of professional pride which is invariably linked to personal professional responsibility. Basic courtroom etiquette must be taught in the context of institutional respect, not subservience. Courtesy must be equated with effective advocacy, and the behavioral high road must be the reinforced as the only path to be followed.

To accomplish the above mandate, the Law Faculties at the University of Alberta and the University of Calgary must re-evaluate their course offerings and content. "Professional Responsibility" is a required third year course at the University of Alberta, though civility is not a distinct or mandatory component. The University of Calgary provides an optional course in "Legal Profession and Ethics," but requires students to take "Interviewing, Negotiation and Counselling" and "Trial Advocacy." Again, civility is not an express element.

The Alberta branch of the Canadian Bar Association provides several excellent opportunities for students to gain exposure to professional legal practice, including an extensive mentoring program. Alberta Court of Queen's Bench Chief Justice Wachowich impresses upon every student that he admits to the bar the need to maintain courtesy and communication with fellow practitioners. In his view of the adversarial legal system, perhaps the most important skill a lawyer must develop is the ability to say "I'm sorry."[15]

III. THE BAR

> The honour and dignity of the profession must be seen in lawyers' everyday actions and attitudes towards peers, new members of the profession, clients, judges and those who assist in the administration of justice.[16]

The Law Society of Alberta's *Code of Professional Conduct*[17] provides, *inter alia*, that "[a] lawyer has a duty to deal with all other lawyers honourably and with integrity,"[18] and "a duty to uphold the standards and reputation of the profession and to assist in the advancement of its goals, organizations and institutions."[19] Further, it is not appropriate for lawyers to engage in adversarial shin-kicking[20] in the name of client advocacy. As the *Code* states, "the duty of zealous representation ... is seen to be subject to law and professional ethics and does not require a lawyer to follow the client's instructions regardless of circumstance."[21]

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14 *Supra* note 6. See also C. Zahn & L. Walker, "Teaching Civility in Law School" (2001) 19 May. Adv. 44 for a point/counterpoint discussion of the utility of introducing civility components in law school curriculums; and American Bar Association, Law Student Division, "Become a Lawyer with Integrity and Civility" (1998) 27 *Student Lawyer* 1 at 42.

15 Interview with Chief Justice Wachowich (2 December 2002).

16 *Defining Professionalism*, *supra* note 6.

17 Online: The Law Society of Alberta <www.law societyalberta.com/Info_lawyers/code/conduct.asp> [*Code*].

18 *Ibid.*, c. 4.

19 *Ibid.*, c. 3.

20 A term used by Judge Gerber, *supra* note 12.

21 *Supra* note 17, s. 2(b).

However, it appears that these provisions are often considered lofty ideals, rather than dictates of normative behaviour:

> This sorry state of affairs is brought to my attention daily in the calls that come to me as Practice Advisor. Lawyers describe to me regularly, conduct that demonstrates rudeness, inflated rhetoric, hostility, and refusal to discuss or consider any position other than that being put forward. Frequently, the language used is antagonistic and unjustifiably aggressive.[22]

The Canadian Bar Association and Law Societies across Canada have responded to the uncivil behaviour of lawyers with a variety of initiatives. The Task Force on Professional Civility provides a good overview of the causes, effects, and costs of incivility and proposes "a long term project focused on education and example,"[23] beginning with "individual lawyers treating others as they would expect to be treated,"[24] and maintaining "a heightened awareness of civility."[25]

The Law Society of Alberta (LSA) has earnestly undertaken initiatives to raise awareness and education regarding incivility in Alberta's legal profession. Former Practice Advisor Barry Vogel routinely reinforced the need for improved civility in LSA circulars,[26] and regularly made presentations on the issue before law students and practitioners alike. The Civility Initiative Steering Committee, struck in 1999, is now an *ad hoc* committee of the Law Society. It has propounded personal resolve to act responsibly and means of improving work environments (including peer pressure, mentorship, collegiality, and stress reduction), and has hosted two widely-attended civility workshops. Efforts such as these represent the roots of cultural change in the professional practice of law.

Law firms must also commit to the civility initiative through increased levels of mentoring. Gavin MacKenzie notes that "lawyers like himself ... started their legal careers with the advantage of working for more senior lawyers who instilled in the new recruits the proper attitude and bearing required of a professional."[27] Mentorship from aware senior lawyers[28] can facilitate systemic change by exemplifying professional values and standards, thereby

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22 Barry Vogel, "Do Not Do Unto Others as Rambo Would Do Unto You," *Ethically Speaking* (1 January 1999) online: Law Society of Alberta <www.lawsocietyalberta.com/info_lawyers/fr_practice_advisor/ethic12.asp>.

23 Task Force on Professional Civility, *supra* note 6 at ii.

24 *Ibid.*

25 *Ibid.* See also *Principles*, supra note 2.

26 Vogel, *supra* note 6; Vogel, *supra* note 22; Barry Vogel, "Rambo follow-up" (1999) 60 *Benchers' Advisory* 9 at 9, online: Law Society of Alberta <www.lawsocietyalberta.com/pubs_policies_reports/benchers/60/8.asp>; Barry Vogel, "Announcing the world-wide invitational incivility squelcher contest," (2003) 73 *Benchers' Advisory* 11 at 11, online: Law Society of Alberta <www.lawsocietyalberta.com/pubs_policies_reports/benchers/73/16.asp>. See also Robert W. Ritchie, "Civility in the practice of law: Must we be "Rambos" to be effective," (1998) 56 *Benchers' Advisory* 6 at 6, online: The Law Society of Alberta, <www.lawsocietyalberta.com/pubs_policies_reports/benchers/56/7.asp>.

27 Jordan Furlong, "Bad manners? Behaviour may have worsened, but lawyers still more polite and professional than most" *Lawyers Weekly*, (10 May 1996) at 8.

28 See Thomas J. Vesper, "Civility is Not a Sign of Weakness: Handling Conflict with Opposing Counsel" *The Association of Trial Lawyers of America* (Washington: The Association of Trial Lawyers of America, 2001) at 89, 7; *Defining Professionalism*, *supra* note 6.

impacting others on an individual level. The assistance of senior mentors is particularly critical in the public courtroom, where there must be ready and willing support and advice for juniors when incivility is encountered: "having a senior adviser and confessor can be personally and professionally helpful when unexpected and difficult situations arise and the answer is not as easy to see as the urge to retaliate."[29]

Ultimately, it is incumbent on each lawyer to practice civilly, "taking personal responsibility for biting our collective tongues, taking those ten deep breaths and treating others as we would like to be treated."[30] In court, such efforts must be extended in the courtroom to include treating witnesses, jury members, opposing counsel, courtroom personnel, and the judiciary with respect. Further, clients must be instructed in courtesy, and advised not to expect "Rambo-style" tactics from their lawyer. Civility in the courtroom is not a sign of weakness:

> a lawyer can be firm and tough-minded while being unfailingly courteous. Indeed, there is real power that comes from maintaining one's dignity in the face of a tantrum, from returning courtesy for rudeness, from treating people respectfully who do not deserve respect, and from refusing to respond in kind to personal insult.[31]

Unfortunately, there will be those practitioners who are not amenable to peer pressure and similar civility initiatives. Wider reporting of observed patterns of incivility — involving some degree of introspection and consultation — can and should nevertheless be utilized by members of the bar and bench to indicate a reduced tolerance of poor behaviour. Although law societies are able to resolve many grievances informally, during the past two years in Alberta, three incivility complaints have been directed to a hearing, two of which resulted in disciplinary measures. The financial cost of incivility is high: in one instance in Alberta, a single sanction totalled $3,918.20, including a fine of $1,500 and $2,418.20 in fixed costs.[32]

IV. THE BENCH

> [T]here seems to be a consensus that the lawyer's public image needs a shine. If the chief lawyers in our system, judges, do not lead the way, the overall effort to improve civility in the profession may well fall short.[33]

> The issue of judicial civility is not about lawyers who are not "tough enough to take it."[34]

The focus on uncivil behaviour within the legal profession has necessarily been expanded to include judges as well as lawyers, for "ultimately, courtesy in the courtroom begins and

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29 Vesper, *ibid.*

30 Brenda Stothert-Kennedy, "Opening Statement: Rampaging civility in Alberta," *Lawyers Weekly* (24 November 2000) at 4.

31 Durant, *supra* note 3 at 36.

32 See Barry Vogel, "Private investigator contact with the other party," (2002) 18 *Ethically Speaking*, online: Law Society of Alberta <www.lawsocietyalberta.com/info_lawyers/fr_practice_advisor/ethic 18.asp>.

33 Greene, *supra* note 10 at 718.

34 *Ibid.* at 715. Many aspersions were cast at lawyers in the media regarding the recent Canadian Judicial Council rebuke of Jean-Guy Boilard J. of the Quebec Superior Court.

ends with the judge. He or she is responsible for what happens in the courtroom and during the proceedings."[35] A courteous judge preserves the litigant's right to an impartial trial,[36] provides an example for members of the bar, and epitomizes justness in the eyes of the public. Thus, the lessons of an intemperate judge can resonate beyond the courtroom doors.

Given that there are few, if any, immediate remedies for the recipient of an intemperate remark from the bench, the magnitude of judicial incivility is conspicuously greater than that of lawyers.[37] Formal remedies after the fact, often pursued with some trepidation, can include the scrutiny of an appellate court,[38] a report to the appropriate judicial council, or a complaint to the chief judge or justice.

In light of the power and prestige afforded judges, their courtroom statements similarly carry considerable weight: "A remark the judge may regard as relatively innocuous achieves much greater significance than what is said by other people in the courtroom, especially to those unfamiliar with legal process."[39] It is often difficult, for lay persons especially, to appreciate firm courtroom management on the part of a judge when emotions and stakes run high. It is therefore imperative that members of the bench observe the *highest* standard of courtesy and patience, for although "[j]udging is not easy ... when everyone behaves, counsel does their best work, and we do our best work."[40]

The Canadian Judicial Council has responded to the issue of civility and the judiciary with advice and guidance for federally-appointed judges in *Ethical Principles for Judges*,[41] while the Ontario Advocates' Society has included provisions related to the judiciary in its *Principles of Civility*.[42] Provincially-appointed judges in British Columbia are subject to the *British Columbia Code of Judicial Ethics*.[43] In an apparent effort to make the judiciary and its operation more transparent, the Canadian Judicial Council publishes annual reports regarding the submissions it receives,[44] and the Ontario Judicial Council now conducts its inquiries in public.[45]

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35 Honourable Timothy L. Hansen, "Some Thoughts on Courtesy in the Courtroom," (2001) 44 Adv. (Idaho) 13. See also Honourable J.O. Wilson, *A Book for Judges*, (Ottawa: Minister of Supply and Services, 1980); and Canadian Judicial Council, *Commentaries on Judicial Conduct*, (Quebec: Yvon Blais for Canadian Judicial Council, 1991) [*Commentaries*].

36 Greene, *supra* note 10 at 715, citing *Santa Maria v. Metro-North Commuter R.R.* 81 F.3d 265 (2d Cir. 1996) at 10.

37 *Ibid.* at 711.

38 However, grossly discourteous judicial behaviour does not reach the standard required for a reasonable apprehension of bias. See *R. v. Maharaj* [2001] O.T.C. 390 (S.C.) [*Maharaj*].

39 *Commentaries*, *supra* note 35 at 75.

40 Wachowich, *supra* note 15.

41 Canadian Judicial Council, *Ethical Principles for Judges*, (Ottawa: Canadian Judicial Council, 1998) online: Canadian Judicial Council <www.cjc.ccm.gc.ca>.

42 *Supra* note 2.

43 Provincial Court of British Columbia, *British Columbia Code of Judicial Ethics*, (Victoria: Provincial Court of British Columbia, 1994), online: Provincial Court of British Columbia <www.provincialcourt.bc.ca/downloads/pdf/codeofjudicialethics.pdf>.

44 See Canadian Judicial Council, *Annual Report 1996-97* (Ottawa: Canadian Judicial Council, 1997), online: Canadian Judicial Council <www.cjc-ccm.gc.ca/english/annual_reports/cjceng1.pdf>; and Canadian Judicial Council, *Annual Report 2000-01*, (Ottawa: Canadian Judicial Council, 2001), online: Canadian Judicial Council <www.cjc-ccm.gc.ca/english/annual_reports/2000-2001_E.pdf>.

45 Kirk Makin, "Secretive judicial council opens its doors" *Globe and Mail* (4 April 2002) A10.

In Alberta, federally-appointed judges are governed by the Canadian Judicial Council, and are thus informed by the *Ethical Principles for Judges*. Provincial Court judges, masters, and justices of the peace are governed by the Alberta Judicial Council, which has the power to develop and implement a code of conduct under the *Judicature Act*.[46] A motion adopting the *Ethical Principles for Judges* was approved on September 18, 1999 at that year's Annual General Meeting of the Alberta Provincial Judges' Association. However, in the opinion of Wachowich C.J.Q.B., Alberta does not want or need a code of judicial conduct. He points to the American experience, where most states that have implemented codes have consequently required full-time commissions to deal with the deluge of complaints received. The stark lines of behaviour drawn by codes of conduct arguably generate inordinate numbers of capricious complaints that require excessive administration and remove a certain amount of discretion from the Judicial Council. Justice Brossard articulates the general opposition to the adoption of a comprehensive code:

> A code of judicial conduct, which would include a number of specific prohibitions, would indeed be dangerous in many respects: If they are too specific, they run the risk of being interpreted as limitative and exclusive and thus leave out conduct which would otherwise have been considered as unacceptable on the part of a judge. If they are worded in such a way that a considerable degree of discretion is involved in interpreting them, or if there is a residual prohibition of misbehaviour or misconduct, the code would not add anything to what is already provided for by the Constitutional Act of 1867.[47]

For Wachowich C.J.Q.B., addressing judicial discipline directly, in an informal yet conscientious fashion, would be preferable.[48] This simple approach can be effective. In the United States, a Chief Judge notes that "the most important and significant way of making a judge accountable to change his behaviour is to make him aware of it, talk to him about it, help him through, and try to teach the judge by example of how to conduct himself."[49]

In his role as Chief Justice of the Court of Queen's Bench of Alberta, Wachowich aims to foster a generation of kind, courteous judges. He has faith in the judicial screening and selection process, the current two year mentoring program for new members of the bench, and the personal support resources now available to judges. It is nevertheless essential that

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46 R.S.A. 2000, c. J-2, s. 32(c).

47 J. Brossard, Report on behalf of the Conference to Canadian Bar Council Meeting, Toronto (21 August 1994). For a different perspective, see A. Wayne Mackay, "Judicial Ethics: Exploring Misconduct and Accountability for Judges," online: Dalhousie University <www.dal.ca/~cjei/mackay.html>. Originally prepared as discussion papers for the Commonwealth Chief Justices Roundtable Meeting in September 1995. See also Justice T. David Marshall, *Judicial Conduct and Accountability* (Toronto: Carswell, 1995) at 68, where he observes that a compromise in the form of canons of values, such as guiding principles, is possible:

> It seems there are certain minimal requirements that an ordinary citizen would require to place his or her faith in the judge or judgment of a court. This basic requirement for public confidence gives rise to judicial norms. This seems a more realistic guide to judicial norms than what any particular group of judges believe these norms are.

48 *Supra* note 15.

49 Honourable L. Milonas, quoted in Greene, *supra* note 10 at 763.

each member of the judiciary aspire to exemplify courtesy; as such, they may collectively commit to a civility initiative through ongoing, focused legal education and awareness.[50]

V. WORKING TOGETHER

> Just as civility in the courtroom is very much the responsibility of counsel, it is also very much the responsibility of the trial judge. It is [a] shared responsibility of profound importance to the administration of justice and its standing in the eyes of the public it serves. Unfortunately, we have no doubt that the failure to satisfactorily discharge this responsibility in this case tarnished the reputation of the administration of justice. This case underlines the importance being given by leaders of the bench and bar to improving civility in the courtroom.[51]

It is evident that efforts geared towards improving civility in the courtroom must be undertaken by law schools, lawyers, and members of the judiciary. However, these endeavours must also be jointly addressed if civility is to be achieved and maintained as a meaningful paradigm of practice. Lessons may be gleaned from the American discourse on incivility, as uncivil behaviour has apparently reached acute levels in many states. In the United States, the most successful solutions to date entail upgraded communication and respect. Three types of these cooperative efforts seem particularly feasible for development in Alberta: improved opportunities for collegiality; "bench books"; and the Inns of Court tradition.

It seems odd to have to tell a group of intelligent people to take some time to relax and get to know one another. However, the modern business model of legal practice and its attendant stresses are considered a root cause of incivility.[52] Collegiality offers an effective counter-measure to an impersonal, competitive atmosphere. Opportunities for collegiality are evident at various Canadian Bar Association-sponsored events, including regular lunch-hour practice group meetings. More basic occasions arise in and around the courthouse, where salutary conversations can be initiated in elevators, hallways, and monthly lunch gatherings. Judges can maintain open-door policies and expand mentoring efforts. In short, basic interpersonal skills and respect must be engaged, fostered, and then carried forward through the courtroom doors themselves.

In the courtroom, basic etiquette and respectful practices must be observed. To that end, "bench books" can be useful resources. Bench books are reference tools which detail a judges' particular courtroom management practices and preferences. Each lawyer should take the time to research the judges in front of whom they must appear. And, of course, judges can

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50 The civility issue is markedly absent from the current continuing legal education conferences planned by the Canadian Institute for the Administration of Justice. See Peter A. Joy, "A Professional Creed for Judges: Leading by Example," (2001) 52 Sup. Ct. L. Rev. 667, who suggests that judicial professionalism performance reviews need to play a larger role in the movement to improve civility.

51 *Marchand, supra* note 7. See also *Maharaj, supra* note 38 at para. 69:

> Civility in criminal proceedings is not confined to the conduct of counsel. It is the exclusive currency in which all participants in the proceedings should trade. It is not a matter of judicial entitlement, a divine right of judges, so to speak. Civility is a shared responsibility. Judges who claim its benefit must also share its burden. Its beneficiaries must be its benefactors. Those who talk the talk must also walk the walk.

52 Task Force on Professional Civility, *supra* note 6.

create "bar books." Ontario Superior Court Justice Helen Macleod recently told a group of civil litigators in Toronto: "Before you enter the courtroom, you may assume, from my experience, the trial judge has already made inquiries of colleagues to assess your general reputation. Just as lawyers research judges on Quicklaw, you can assume that judges are doing the same."[53]

Lawyers in the Utah State Bar Litigation Section undertook a massive bench book project as part of a civility initiative, whereby they interviewed and surveyed judges and posted their results online.[54] This type of project may be too ambitious for Alberta lawyers to initiate at the moment, but as Wachowich C.J.Q.B. observes, if the bar and bench were truly communicative, one would already know this information.[55]

In the United States, the historical Inns of Court program has been hailed as an effective civility initiative rooted in, and adapted from, a traditional philosophical mission "to foster excellence in professionalism, ethics, civility, and legal skills for judges, lawyers, academicians, and students of the law in order to perfect the quality, availability and efficiency of justice."[56] The program sets out several significant objectives:

> III. To facilitate the exchange of ideas, experiences and ongoing education among members of the American Inns of Court, thereby maintaining an institutional forum where judges, lawyers, academicians and students of law, working together, pursue the highest goals of the legal profession.
>
> IV. To shape a culture of excellence in American jurisprudence by promoting a commitment to professionalism, ethics, civility and legal skills in the practice of law, and transmitting these values from one generation of lawyers to the next.[57]

To date, the Inns of Court tradition has not been widely established in Canada, with the exception of British Columbia.[58] In Alberta, the Inns of Court program is operated though the provincial branch of the Canadian Bar Association and currently has one chapter in Edmonton that meets twice a year. Given the opportunities, both urban and rural, that the Inns of Court offers in the way of mentoring, collegiality, learning, and enjoyment, the program appears to be a perfect complement to other civility initiatives being planned and undertaken throughout the province.

VI. CONCLUSION

The prescription for collective and joint efforts of law schools, the bar, and the bench to improve civility in Alberta courtrooms looks suspiciously similar to guidelines one might

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53 As reported by Gambrill, *supra* note 5.

54 See Utah State Bar Litigation Section, online: Litigation Section <www.utlitsec.org>.

55 *Supra* note 15.

56 See the American Inns of Court, online: American Inns of Court <www.innsofcourt.org/content viewer.asp> [Inns of Court]. See also Naseem Stecker, "A Matter of Civility: American Inns of Court Strive to Shape a Culture of Excellence" (2001) 80 Mich. B.J. 24.

57 Inns of Court, *ibid.*

58 Where the Law Society of British Columbia recommends that articling students join an Inns of Court Program.

expect to find in a kindergarten mandate: Be nice to each other, be kind to the teacher, listen to and learn from the teacher, talk to your parents about difficulties, see the principal when necessary, share what you have to offer, and have fun both in school and out on the playground. Far from lofty goals, such principles appear deceptively simple. Yet, those fundamental aspirations ought to form the basic tenets of a successful, self-governing legal profession. Indeed, the integrity of the Alberta justice system demands nothing less.