

ARTICLE

## REVISITING CIVILITY AFTER GROIA

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### INTRODUCTION

“Every counsel has a duty to his client fearlessly to raise every issue, advance every argument, and ask every question, however distasteful, which he thinks will help his client’s case. But, as an officer of the court [...] he has an overriding duty to the court, to the standards of his profession, and to the public, which may and often does lead to a conflict with his client’s wishes.”

— Lord Reid (1967)<sup>1</sup>

The Rules of Professional Conduct (the “Rules”) require practicing lawyers in Ontario to behave in a civil manner with clients, opposing counsel, the public and the courts.<sup>2</sup> An admirable goal in theory, opponents of the Law Society of Upper Canada’s (“LSUC”) emphasis of civility focus on two main threads of argument. First, that civility is so poorly defined to be devoid of meaning. In particular, opponents ask how lawyers can realistically balance their obligation to zealously defend their client with the duty to act in a civil manner, and whether these duties can coexist. If so, at what point do lawyers’ actions breach the civility obligations under the Rules? The second thread of argument is that, even if properly defined, civility adds little value to the profession and takes time away from debates on other more pressing ethical matters—even wasting judicial time and resources. In contrast, proponents of civility view it as an essential aspect of the functioning of the legal system.

The two arguments by critics of the civility agenda deserve to be revisited in light of the disciplinary proceedings against Joseph Groia, related to his successful 2007 defence of former Bre-X officer John Felderhof.<sup>3</sup> Following the 2013 LSUC appeal decision,<sup>4</sup> and the 2015 Ontario Superior Court of Justice decision (“OSCJ Decision”),<sup>5</sup> it is now easier to define, with precedential certainty, when a lawyer’s courtroom behaviour breaches the civility obligations under the Rules. While the LSUC has favoured uniformity in the application of the Rules between solicitors and litigators,<sup>6</sup> the cogent arguments in favour of requiring litigators to be civil now appear far weaker when applied to the realities of

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1 *Rondel v Worsely*, [1967] 3 WLR 1666 (HL).

2 The Law Society of Upper Canada, Rules of Professional Conduct, Toronto: Law Society of Upper Canada, 2000 (amendments current to September 24, 2015) [*LSUC Rules*].

3 *R v Felderhof*, 2007 ONCJ 345, OJ No 2974 [*Felderhof*].

4 *Law Society of Upper Canada v Joseph Groia*, 2013 ONSLAP 0041 [*LSUC Decision*].

5 *Joseph Groia v The Law Society of Upper Canada*, 2015 ONSC 686, 124 OR (3d) 1 [*OSCJ Decision*].

6 *LSUC Rules*, *supra* note 2.

work by transactional solicitors. Moreover, after *Groia*,<sup>7</sup> (which provides little guidance for transactional solicitors), a reform of the uniform application of the civility obligations of all lawyers is increasingly necessary. This paper draws a middle line between and opponents and supporters of civility with two main arguments. First, civility has become increasingly well defined. Second, civility is considerably more important for litigators than solicitors.

## I: DEFINING CIVILITY AFTER GROIA

Undefined in the Rules, the conception of civility in the legal context has evolved over time. The initial emphasis centered on striving to find an exhaustive definition for the term to provide certainty and clarity to lawyers. It is therefore not surprising that dictionary definitions of civility, which are replete with broad references to politeness and courtesy,<sup>8</sup> were followed by legal bodies. For instance the Nova Scotia Barristers Society clearly took comfort in the judgement of the lexicographers when crafting their own, very similar, definition of civility as “akin to notions of courtesy, politeness, good manners and respect”.<sup>9</sup> Courts and disciplinary bodies responded to criticisms by narrowing the scope of civility and required uncivil behaviour to involve an unfounded personal attack on opposing counsel.<sup>10</sup> Past literature on the subject has identified that “tactics tending to demean or degrade one’s opponent are the hallmark of incivility”.<sup>11</sup> *R v Dunbar et al*, (a case in British Columbia almost 10 years prior to *Groia*), was decided on the basis of this rationale.<sup>12</sup>

Consistent with prior judgements, *Groia* also illustrates the increasing comfort of lawmakers with an imperfect definition for civility, one which will never fully encompass the breadth of its application.<sup>13</sup> For instance, Alice Wooley noted that while civility provides a useful short form term it is not sufficiently broad to fully describe the professional obligations of lawyers’ behaviour.<sup>14</sup> In the recent OSCJ Decision, Justice Nordheimer echoed this view by saying that civility does not lend itself to a fixed definition; the concept is best assessed on a case-by-case basis.<sup>15</sup> Justice Nordheimer cited *Doré* in support of his position that findings of professional misconduct will always require “a fact-dependent and discretionary exercise”.<sup>16</sup>

7 The LSUC Decision and the OSCJ Decision are collectively referred to as *Groia*.

8 Three provisions within the Rules require lawyers to act in a civil manner: 3.2-1 (when working with clients), 5.1-5 (when dealing with tribunals) and 7.2-1 (generally with all people in practice). Any demonstrated breaches of these sections is deemed professional misconduct and subject to discipline by the law society under 7.8.2-2 of the Rules, a power granted by section 34 of the *Law Society Act*, RSO 1990. The jurisdictional right of LSUC to prosecute uncivil behaviour as professional misconduct was also more recently acknowledged by the Ontario Court of Appeal in *Marchand (Litigation guardian of) v Public General Hospital Society of Chatham*, (2000) 51 OR (3d) 97 (CA).

9 Alice Wooley, “Does Civility Matter?” 46 Osgoode Hall LJ 175 at 177 [Wooley, “Does Civility Matter?”].

10 Michael Code, “Counsel’s Duty of Civility: An Essential Component of Fair Trials and an Effective Justice System” (2007) 11 Can Crim L Rev 97 at 102.

11 RR Sugden QC, “Civility in the Legal Profession” in Jack Giles, ed, *The Splendour of the Law*, (Toronto: Dundurn Press, 2001) at 93.

12 *R v Dunbar et al*, 2003 BCCA 667, [2003] BCJ No 2767 at paras 331-333.

13 *OSCJ Decision*, *supra* note 5 at para 68.

14 *LSUC Decision*, *supra* note 4 at para 210.

15 *OSCJ Decision*, *supra* note 5 at para 58.

16 *Doré v Barreau du Québec*, 2012 SCC 12 at para 66, [2012] 1 SCR 295 [*Doré*].

Despite the increasingly consistent message from lawmakers, critics continue to claim that civility is too discretionary as to have clear meaning in the legal context.<sup>17</sup> Such critics' arguments are aided by the fact other professional obligations of lawyers are more objectively defined; for instance in *R v Neil* the Supreme Court of Canada developed a *bright line test* for determining if lawyers were representing a client while operating in a conflict of interest.<sup>18</sup> These critics argue that the contextual nature of civility, combined with frequent calls to punish uncivil lawyers, creates a troubling position for the profession.<sup>19</sup> These arguments are however unfounded as a closer analysis of the LSUC and OSCJ decisions indicate that "a line" has now emerged for determining uncivil behaviour, at least within the context of a courtroom.

### A. The LSUC Decision

Joseph Groia was prosecuted by the LSUC for his actions during the 2007 *Felderhof* trial. In *Felderhof*, a former officer at the gold mining company Bre-X (a company at the centre of what is widely viewed as one of the largest frauds ever perpetrated in Canadian securities markets),<sup>20</sup> was prosecuted, but ultimately cleared, of violations of the *Securities Act* (Ontario) related to insider trading and authorizing misleading new releases about Bre-X.<sup>21</sup> Mr. Groia was successful in defending his client against the charges presented by the Ontario Securities Commission but was accused of repeated instances of incivility towards opposing counsel. Joseph Groia was originally found guilty of professional misconduct for his actions during the *Felderhof* case by an LSUC hearing panel in April 2013.<sup>22</sup> Mr. Groia appealed the decision of the hearing panel to an LSUC appeal panel. The appeal panel paid little deference to the reasons of the hearing panel in relation to Mr. Groia's conduct during *Felderhof* and undertook its own analysis of the accusations.<sup>23</sup> In undertaking their own analysis the appeal panel focused on nine instances of alleged misconduct by Mr. Groia throughout the particularly acrimonious period in the trial. While indicating their willingness to review the entire surroundings, the LSUC proceeded to analyze and review each action, or instance, in chronological order and on an independent basis.<sup>24</sup> The LSUC's analysis of the nine actions revealed three important factors in assessing whether behaviour constitutes professional misconduct, namely (1) whether the actions were part of a wider "pattern", (2) if the comments were directly aimed at questioning the honesty and integrity of opposing counsel, or alleged deliberate prosecutorial misconduct, and (3) whether there was no objectively reasonable basis for making the statements. If all three could be answered in the affirmative then the action was viewed as professional misconduct, and if one was answered in the negative then the analysis for the LSUC became more complex.<sup>25</sup>

The appeal panel made clear that while all actions were part of a wider pattern of behaviour, some actions by Mr. Groia were less civil than others. It is therefore illuminating to view each of the actions on a spectrum from those which were most civil to those which were least civil. Consistent with the way many academics view administrative law decisions,<sup>26</sup>

17 *OSCJ Decision*, *supra* note 5 at para 58.

18 *R v Neil*, 2002 SCC 70 at para 29, 3 SCR 631 [*Neil*].

19 Don Bayne, "Problems with the Prevailing Approach to the Tension between Zealous Advocacy and Incivility" (2013) 4 CR-ART 301 at 312.

20 David Osborne, "Bre-X 'world's greatest mining scam'", *The Independent* (6 May 1997), online: <[www.independent.co.uk](https://www.independent.co.uk)> archived at <<https://perma.cc/3JA5-JML9>>.

21 *Felderhof*, *supra* note 3 at para 5.

22 *OSCJ Decision*, *supra* note 5 at para 5.

23 *LSUC Decision*, *supra* note 4 at para 237.

24 *Ibid* at para 242.

25 *LSUC Decision*, *supra* note 4 at para 235.

26 See e.g. Susan Gratton, "Standing at the Divide: The Relationship between Administrative Law and the Charter Post-Multani" (2008) 53 McGill LJ 477.

a spectrum-based analysis also makes it easier to determine an answer to the key question for many Ontario lawyers: at what point does uncivil behaviour “cross the line” and become a breach of their civility obligations under the Rules? It is appropriate to analyze in greater detail the “border line” actions (those emboldened below in *Figure 1*):

*Figure 1*: A spectrum analysis of the LSUC Decision<sup>27</sup>



During action 2, referred to as the *Stinchcombe* motion, Mr. Groia directed a number of accusations at the OSC prosecutors including an allegation that the prosecutors tried to overwhelm the defence with certain disclosure while subsequently failing to comply with disclosure requests in other areas. Mr. Groia acknowledged that he was making deliberate accusations of prosecutorial misconduct, and was found by the appeal panel to have made these accusations without foundation.<sup>28</sup> On review of this action, the appeal panel stated that this “might not amount to professional misconduct” on its own.<sup>29</sup> The LSUC statements recognize the emotions in a court case, and the according need to excuse or forgive isolated instances of incivility. This is consistent with the guidance in 5.1-5 of the Rules that there should be a “pattern” of incivility to constitute professional misconduct.<sup>30</sup> For this reason, action 2 standing alone, was not deemed to be professional misconduct.

While not considered close to the border, in analysing the behaviour in action 3 the appeal panel makes an important clarification. They confirm that civility, as it relates to professional misconduct, is distinct from the concept of “politeness” often provided by dictionary definitions. The appeal panel makes this distinction by saying that “aggressive” submissions examined in the appropriate context will not constitute professional misconduct.<sup>31</sup> It is therefore possible that in relation to the Rules, a lawyer’s behaviour be polite but uncivil, and similarly impolite yet civil.

Action 4 (referred to as the “Placer Dome Document” in the LSUC Decision), involved Mr. Groia seeking to question a witness about a letter from senior officers of the gold mining company Placer Dome. Though Mr. Groia made incorrect legal submissions in this action, he made no allegations of prosecutorial misconduct,<sup>32</sup> therefore this action did not constitute professional misconduct.

Actions 8 and 9 occurred near the end of the trial and involved unjustified personal attacks on the prosecution’s integrity, but were not direct accusations of prosecutorial misconduct.<sup>33</sup> Consistent with the guidance from action 4, where the appeal panel indicated that impugning the integrity of the prosecutors, even if not alleging

<sup>27</sup> Each action was plotted on this spectrum based on the author’s own reading of the appeal panel’s written decision.

<sup>28</sup> *LSUC Decision*, *supra* note 4 at para 264.

<sup>29</sup> *Ibid* at para 270.

<sup>30</sup> *LSUC Rules*, *supra* note 2.

<sup>31</sup> *LSUC Decision*, *supra* note 4 at para 274.

<sup>32</sup> *Ibid* at para 280.

<sup>33</sup> *Ibid* at para 316.

prosecutorial misconduct, could be a breach of the civility standards, actions 8 and 9 were sufficient to qualify as professional misconduct. The panel's briefer analysis of these actions suggests that the three requirements need not co-exist within the same action. For example, if an unjustified accusation of prosecutorial misconduct had previously been alleged, later acts of rudeness or incivility, irrespective of whether such instances, also individually qualified as prosecutorial misconduct accusations, could be considered breaches of the Rules. In this case, because Mr. Groia made unjustified personal attacks on opposing counsel, actions 8 and 9 were sufficient to constitute breaches of the Rules.

One substantive point Mr. Groia himself raised in lectures since *Felderhof*, but dealt with only in passing by the appeal panel, was that Mr. Naster, the lead OSC prosecutor, was equally blameworthy.<sup>34</sup> In support of this argument, in *Felderhof*, the trial judge felt neither side had a "monopoly" over uncivil behaviour.<sup>35</sup> No investigations were brought against Mr. Naster but it was noted in the LSUC Decision that provocation, while not a complete defence, is a relevant consideration.<sup>36</sup> We should therefore reasonably expect future decisions on civility to pay greater attention to this factor.

## B. The OSCJ Decision

Mr. Groia was unsuccessful in his appeal to the Ontario Superior Court of Justice in 2015. In upholding the reasonableness of the LSUC Decision, Justice Nordheimer engaged in extensive discussion regarding civility and its relationship with the Rules. Although not materially different from the LSUC Decision, Justice Nordheimer makes three important clarifications.<sup>37</sup>

First, by referring to the cumulative effect of the actions, as opposed to any single action, Justice Nordheimer emphasises the need to examine the entire context of events rather than considering each action individually.<sup>38</sup> While the LSUC Decision also considered the broader context of the case by including actions which had previously taken place, Justice Nordheimer's approach is less systematic than the path followed by the appeal panel and considers actions happening both prior to and after in time.

Second, Justice Nordheimer devised a novel two-part test for assessing if the behaviour of a lawyer breaches the Rules. In part one, a lawyer's behaviour must be found to be "rude, unnecessarily abrasive, sarcastic, demeaning, abusive or of any like quality",<sup>39</sup> in other words, uncivil in the common sense. It is at this point Justice Nordheimer believes the frequency of actions should be assessed, and that single instances are unlikely to ground liability unless particularly egregious.<sup>40</sup> If this first part is met, the second stage involves assessing whether the incivility of the lawyer has a "realistic prospect" of bringing the administration of justice into disrepute.<sup>41</sup> With the second part of the test, Justice Nordheimer took a similar view to the appeal panel but broadened the requirement from alleging prosecutorial misconduct to any disruptions to the administration of justice. Justice Nordheimer's test therefore offers greater precedential value while also reaffirming that incivility under the Rules is a higher standard than its ordinary meaning.

34 Anita Anand, "Ethics in the Business Law Setting" (Lecture delivered at the Faculty of Law, University of Toronto, 19 November 2014), [unpublished].

35 *Felderhof*, *supra* note 3 at para 264.

36 *LSUC Decision*, *supra* note 4 at paras 7, 233.

37 *OSCJ Decision*, *supra* note 5 at para 78.

38 *Ibid* at para 94.

39 *Ibid* at para 74.

40 *Ibid*.

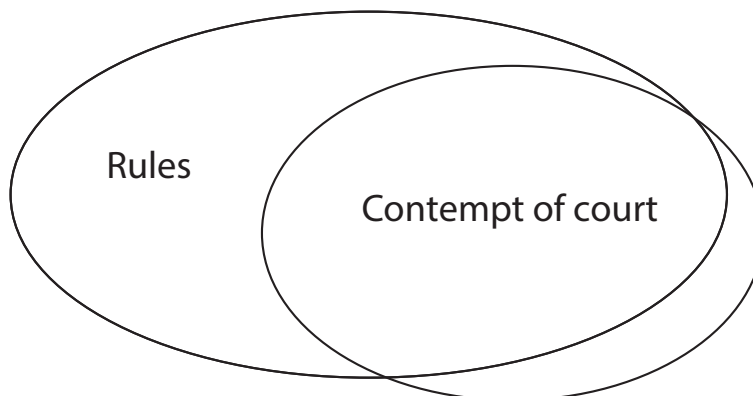
41 *Ibid* at para 76.

Third, Justice Nordheimer makes the clarification that a good faith belief in making accusations of prosecutorial misconduct by a lawyer is an insufficient defence to uncivil behaviour.<sup>42</sup> To excuse such behaviour a good faith belief must also be found to be objectively reasonable.<sup>43</sup>

## II: THE IMPORTANCE OF CIVILITY

Arguments that civility is unimportant, or so significantly less important than defending ones client as to be irrelevant, trace back as far as the 19th century declarations of Lord Brougham in the *Queen Caroline* case.<sup>44</sup> More contemporary critics have noted that civility detracts from more important ethical duties,<sup>45</sup> is a waste of judicial time and resources<sup>46</sup> and is a method of elitism.<sup>47</sup> The merits of linking civil behaviour with social class are questionable but a potential argument can be made that it may streamline a certain type of behaviour, referred to by Alice Wooley, an expert witness in the *Groia* case, as the “gentleman lawyer”,<sup>48</sup> to the disadvantage of other personality types. However, in the LSUC Decision, the appeal panel took steps to distance civility from such claims, reiterating that the Rules do not mandate politeness.<sup>49</sup> Alice Woolley has also found that incivility is unlikely to result in judicial unfairness (i.e. see *Felderhof* case).<sup>50</sup> On this issue Rule 5.1-5 defines contempt of court and professional misconduct, while overlapping, as not identical, and that even if unpunished in court such actions may still constitute misconduct (and vice versa). In this respect, as depicted in *Figure 2*, LSUC retains the ability to take a differing view of lawyer’s conduct than determined by a court.<sup>51</sup> With an increasing portion of lawyers’ work being done outside of a courtroom, this flexibility is clearly necessary for the LSUC to effectively regulate the behaviour of Ontario lawyers.

*Figure 2:* Interrelationship between the Rules and contempt of court



42 *Ibid* at para 71.

43 *Ibid* at para 74.

44 Monroe Freedman, “Henry Lord Brougham and Zeal” (2006) 34:4 Hofstra L Rev 1319 at 1319.

45 Wooley, “Does Civility Matter?”, *supra* note 9 at 185.

46 Joseph Groia, Nic Wall & Elizabeth Carter, “Shades of Mediocrity: The Perils of Civility” (Paper delivered at the Canadian Bar Association Legal Conference, 17 August 2004) at 3 [Groia, Wall & Carter, “Shades of Mediocrity”].

47 Wooley, “Does Civility Matter?”, *supra* note 9 at 183.

48 Alice Wooley, “Uncivil by too much civility? Critiquing Five More Years of Civility Regulation in Canada” (2013) 36 *Dal LJ* 239 at 253.

49 *OSCJ Decision*, *supra* note 5 at para 6.

50 Wooley, “Does Civility Matter?”, *supra* note 9 at 182.

51 *OSCJ Decision*, *supra* note 5 at para 56.

Proponents of civility have argued that civil behaviour promotes the efficient functioning of the justice system while also fostering public trust in lawyers.<sup>52</sup> Stephen Goudge, a supporter of civility requirements for lawyers, argues that it is possible to be an effective litigator when acting civilly.<sup>53</sup> Connie Reeve, recipient of the 2012 Catzman Memorial Award for Professionalism & Civility, argues that civility is strongly preferred and that judges respond positively to lawyers who take the “high road” and maintain civility in court.<sup>54</sup> Justice Morden takes an even broader view and metaphorically defines civility as the “glue” holding the field of litigation together.<sup>55</sup> Typically cited reasons for requiring litigators to be civil include the potential for becoming distracted, lengthening proceedings or losing the confidence of the judge or jury, all likely to be detrimental to the client.<sup>56</sup> Based on these views it seems reasonable to believe that lawyers and their client are best positioned by ensuring civility in court.

Most discussion and literature on the importance of civility has, perhaps unsurprisingly, focused on the adversarial trial setting.<sup>57</sup> In contrast, the applicability of civility to solicitors, in particular those doing corporate transactional work, has received very little critical discussion. Predictably, Mr. Groia has been an outspoken critic of civility in the corporate law setting, reasoning that since other professional service businesses operating in the corporate context don't require civility, incivility should be forgiven in the legal industry.<sup>58</sup> Both the rationale and factual basis for Mr. Groia's arguments are questionable however. On a normative level, the applicability of certain policies in one setting or profession do not justify the use of the same policies in another; rather policies should be crafted to fit the situation in which they are meant to relate. Mr. Groia's argument is also flawed given many professional services companies now place great importance on civility in the workplace and even tie compensation of senior managers to the results of “360-degree feedback” review processes where all employees, regardless of seniority, provide feedback on the conduct and effectiveness of their managers.<sup>59</sup> Such firms encourage open dissent but they often require such dissent to be in a civil manner. It is therefore misguided for Mr. Groia to argue that requiring civility comes at the expense of open debate and dissent.<sup>60</sup>

Mr. Groia would however have been right to point out that the reasons discussed in support of civility in the courtroom are far less applicable to the boardroom. For example, while civility may be necessary for the efficient functioning of the judicial system, a common argument raised in favour of civility in the courtroom, this is a far less relevant concern for much work carried out by solicitors. During commercial negotiations, parties may actually seek lawyers who are more assertive, emotional, abrupt or forthcoming to advance their interests and extract more favourable terms. The famed book *Getting to Yes*, used to teach negotiation in many Canadian law schools, even contemplates the

52 Stephen Goudge, “Ethics in the Business Law Setting” (Guest Lecture, delivered at the Faculty of Law, University of Toronto, 8 October 2014), [unpublished].

53 *Ibid.*

54 Janice Tibbetts, “Keeping a civil tongue: How to win cases and impress people” (October 2014), *The Canadian Bar Association*, online: <<http://www.cba.org/>> archived at <<https://perma.cc/954C-T569>>.

55 The Honourable JW Morden, “Call to the Bar Address,” *Law Society of Upper Canada* (22 February 2001) at 4.

56 Wooley, “Does Civility Matter?,” *supra* note 9 at 181.

57 See for instance Michael Code, “Counsel's Duty of Civility: An Essential Component of Fair Trials and an Effective Justice System” (2007) 11 *Can Crim L Rev* 97.

58 Groia, Wall & Carter, “Shades of Mediocrity,” *supra* note 46 at 9.

59 Jack Zenger & Joseph Folkman, “Getting 360 Degree Reviews Right” (7 September 2012), *Harvard Business Review*, online: <<https://hbr.org/2012/09/getting-360-degree-reviews-right/>> archived at <<https://perma.cc/3HJC-MWQN>>.

60 Groia, Wall & Carter, “Shades of Mediocrity,” *supra* note 46 at 3.

common occurrence of such behaviour and advises on how one might seek to turn such behaviour to one's advantage in a negotiation.<sup>61</sup> Lawyers may even receive instructions directly from clients about the style and demeanor they should adopt, and may be under threat of losing a retainer or future business if they do not follow such wishes. Moreover, many solicitors do not act in a "public" forum and are more likely to be judged based on their results, rather than their general cadence. Finally, it is less likely for the reputation of the profession to be damaged by the behaviour of a corporate solicitor, as confirmed by a 2010 LSUC report which found that trial and family law settings were most likely to result in complaints for uncivil behaviour,<sup>62</sup> a fact which likely indicates its lower importance, rather than objectively superior behaviour of such lawyers. Interestingly, a bold interpretation of the two-part test outlined by Justice Nordheimer may even suggest that the professional obligations of civility have little application to corporate transactional lawyers. The second part of Justice Nordheimer's test, that a lawyer's uncivil conduct has a reasonable chance of bringing the administration of justice into disrepute,<sup>63</sup> would likely be significantly more difficult to prove for corporate transactional lawyers.

It is worth clarifying that the arguments above should not be interpreted to mean that the author is advocating for less civility in the field of corporate law. There are many studies illustrating the improvements to workplace environment, efficiency and profitability that emerge from civility, all things that would support individual firms promoting civility within their organization.<sup>64</sup> Rather, the author is merely advocating for the LSUC to not place blanket restrictions on the profession and lawyers. As Lorne Sossin, Dean of Osgoode Hall Law School, has stated, a single rule of civility can do damage if applied in ways that do not account for the realities of the profession.<sup>65</sup> A more refined approach to civility is preferred.

The obvious effects litigators' behaviour can have on their clients and the outcome of a case suggests that civility remains an important concept. However, to have significant value it must have consistent meaning, especially since the instigation of LSUC proceedings has immediate financial and professional impacts on those under investigation.<sup>66</sup> A lack of clarity on the civility requirements may have previously encouraged lawyers to "err on the side of courtesy",<sup>67</sup> but in light of *Groia* the argument that civility is devoid of meaning in the courtroom has little basis. Litigators can now be assured, thanks to the clarity provided by the LSUC appeal panel and Justice Nordheimer, that providing they do not make allegations seeking to undermine the credibility of opposing counsel, or allege prosecutorial misconduct without an objectively reasonable basis, they will not be

61 Roger Fisher & William Ury, *Getting to Yes*, (New York: Penguin Books, 2011) at 33.

62 "Report to Convocation: Treasurer's Report on the Civility Forum" (27 May 2010), *Law Society of Upper Canada*, online: <[http://www.lsuc.on.ca/media/convmay10\\_treasurers\\_report.pdf](http://www.lsuc.on.ca/media/convmay10_treasurers_report.pdf)> archived at <<https://perma.cc/5F48-DQNX>> at 9.

63 *OSCJ Decision*, *supra* note 5 at para 75.

64 Christine Porath & Christine Pearson, "The Price of Incivility" (January-February 2013), *Harvard Business Review*, online: <<https://hbr.org/2013/01/the-price-of-incivility>> archived at <<https://perma.cc/ZK6H-RQFQ>>.

65 Justin Ling, "Has the so-called civility movement already won?" (January 2015), *CBA National*, online: <<http://www.nationalmagazine.ca/Articles/January-2015-Web/Out-of-order.aspx>> archived at <<https://perma.cc/2SYX-Q3M2>>.

66 For example, Darren Sukonick and Beth DeMerchant were investigated for their involvement in the sale of the Hollinger Group of Companies between 2000 and 2003 but were ultimately found not guilty of professional misconduct. Despite this the pair suffered significant professional costs associated with the investigations, see Yamri Taddese, "LSUC to appeal Sukonick and DeMerchant decision" (January 10, 2014), *Canadian Lawyer Magazine*, online: <<http://www.canadianlawyermag.com/legalfeeds/1879/lsuc-to-appeal-sukonick-and-merchant-decision.html>> archived at <<https://perma.cc/YQE4-LMA2>>.

67 Wooley, "Does Civility Matter?", *supra* note 9 at 178.



found guilty of incivility. There are far less compelling reasons for continuing to force the civility agenda on solicitors. While civility may be something lawyers may strive for, requiring it does not recognize the reality of corporate transactional work and the considerations in favour of civility in the solicitor setting are not ones a governing body like the law society should be concerned with. This reasoning may favour a re-evaluation by the LSUC of the Rules' uniform application in favour of a more tailored approach similar to the regulation of legal professionals in England and Wales. Even if a more refined approach is not adopted, Mr. Groia's recent election to the bench by LSUC members, and the upcoming judgment by the Ontario Court of Appeal on *Groia*, increases the likelihood of debates over civility in the profession continuing.<sup>68</sup>

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68 Sean Fine, "Joe Groia elected to Law Society governing body", *The Globe and Mail* (1 May 2015), online: <<http://www.theglobeandmail.com/report-on-business/industry-news/the-law-page/joe-groia-elected-to-law-society-governing-body/article24225404/>>.