The Law Society of Saskatchewan

JOHN RONALD CHERKEWICH
February 6, 2014
***Law Society of Saskatchewan v. Cherkewich*, 2014 SKLSS 3**

IN THE MATTER OF *THE LEGAL PROFESSION ACT, 1990*
AND IN THE MATTER OF JOHN RONALD CHERKEWICH,
A LAWYER OF PRINCE ALBERT, SASKATCHEWAN

DECISION OF THE HEARING COMMITTEE FOR THE LAW SOCIETY OF SASKATCHEWAN

Counsel: Timothy Huber for the Law Society of Saskatchewan Investigation Committee
Ronald Cherkewich for himself

Hearing Date and Location: September 11, 2013, Saskatoon

INTRODUCTION

1. By an Amended Formal Complaint dated August 1, 2013, it is alleged that John Ronald Cherkewich is guilty of conduct unbecoming. The Amended Formal Complaint consists of two counts:

> **1. Did, on or about November 16, 2011, fail to treat M.M., an adjudicator presiding over an Indian Residential School Independent Assessment proceeding, with courtesy and respect by conducting himself in a rude and/or provocative manner.**
>
> **Reference *Code of Professional Conduct* Chapter IX**
>
> **2. In the alternative to allegation #1, did, on or about November 16, 2011, fail to act with courtesy and civility toward M.M., a fellow member of the Law Society of Saskatchewan presiding over an Indian Residential School Independent Assessment proceeding, by conducting himself in a rude and/or provocative manner.**
>
> **Reference *Code of Professional Conduct* Chapter XVI**

2. At the outset of the hearing, Mr. Cherkewich consented to the amendment and the nature of the amendment was to add Count 2. Further, there was no objection by counsel for the Investigation Committee or Mr. Cherkewich to the composition of the Hearing Committee.

3. By agreement, a joint Exhibit Book was filed and marked as L-1. As well and by agreement, Mr. Cherkewich submitted one exhibit being M-1. This was an email between Mr. Huber and Dennis Claxton who was the legal counsel for Canada at the hearing conducted November 16, 2011 that is the subject of the charges.

4. The Investigation Committee called one witness. Mr. Cherkewich testified on his own behalf and in addition, he called two witnesses.

FACTS

5. Mr. Cherkewich has practised law in Prince Albert, Saskatchewan since 1970. At the times material to the counts and at present, Mr. Cherkewich is a sole practitioner. A considerable part of his practice is representing claimants in the Indian Residential School Adjudication Independent Assessment Process ("IAP"). The two counts originate from Mr. Cherkewich's conduct during an IAP hearing in Prince Albert on November 16, 2011. The two counts refer to M.M. M.M. was the adjudicator in an IAP hearing held November 16, 2011 in which Mr. Cherkewich represented a claimant named K.S.

M.M.:

6. M.M. testified on behalf of the Investigation Committee. M.M. is a member of the Law Society of Saskatchewan. 95% of her practice consists of serving as an adjudicator through the IAP process. She has served in this capacity since July, 2011. She estimated that she has conducted more than 100 IAP hearings. M.M. has a contract with the Federal government to do this work.

7. M.M. was asked to describe a typical IAP hearing. Her immediate response was "It is nothing like court". First of all, she described the physical layout of the room. Unlike a court hearing, the participants at IAP hearings sit around a table and the claimant sits next to the adjudicator. The adjudicator and the claimant have a dialogue or more particularly, the adjudicator interviews the claimant. Counsel for the claimant and the Federal government (Canada) may suggest new or follow up questions to be put to the complainant. Those suggestions come through separate caucuses between the adjudicator and counsel. The adjudicator tapes the proceedings and there is no court reporter. Claimants may choose to testify under oath, affirm or use an eagle feather to promise to tell the truth.

8. At the end of the interview by the adjudicator, the adjudicator hears submissions from counsel as to the credibility of the claimant and the appropriate compensation award. The adjudicator renders a decision on the compensation award. Under cross-examination, M.M. further described the process, indicating that adjudicators do not have the power to subpoena witnesses. Further, the decisions of adjudicators are not subject to judicial review. Their hearings are closed to the press and the public.

9. As of November, 2011, M.M. estimated she had conducted approximately 10 IAP hearings. She testified it was her practice then and now to always ask the claimant's lawyer for a copy of the retainer agreement between the claimant and his or her counsel. She understood this was part of her duties in order to conduct a legal fee ruling under the IAP process.

10. On November 15 and 16, 2011 two separate IAP hearings had been scheduled for Prince Albert. In both cases, Mr. Cherkewich was counsel for the claimants. After the conclusion of the first hearing on November 15, 2011, M.M. asked Mr. Cherkewich for his retainer agreement. Mr. Cherkewich responded that he "did not do" retainer agreements. M.M. testified that at that point, she did not pursue the issue. However that evening, she telephoned Dan Shapiro, the Deputy Chief Adjudicator of IAP. Based on her discussion with Mr. Shapiro, M.M. understood that she must obtain the retainer agreement from lawyers representing claimants. Mr. Shapiro reminded M.M. as to the provisions of an Order granted by Mr. Justice Ball of the Court of Queen's Bench on March 8, 2007. The Order is at L-1, tab 4. As the Committee understood it, similar orders were issued in eight other jurisdictions as part of the implementation of the Indian Residential School Settlement Agreement. Paragraph 17 of the Order provides as follows:

> THIS COURT ORDERS that all legal fees charged by legal counsel to claimants pursuing claims through the IAP shall not exceed 30% of compensation awarded to the claimant. This 30% cap shall be inclusive of and not in addition to Canada's 15% contribution to legal fees, but exclusive of GST and any other applicable taxes. The 30% cap shall also be exclusive of Canada's contribution to disbursements. Upon the conclusion of an IAP hearing legal counsel shall provide the presiding Adjudicator (the 'Adjudicator') with a copy of their retainer agreement and the adjudicator shall make such order or direction as may be required to ensure compliance with the said limit on legal fees.

11. M.M. testified that paragraph 17 and particularly the last sentence was consistent with her understanding of the process and the advice she had received from Mr. Shapiro.

12. On November 16, 2011, another IAP hearing was scheduled involving M.M. as the adjudicator and Mr. Cherkewich for the claimant, K.S. Before the proceeding began, M.M. asked counsel for Canada to leave the room so that she could discuss a matter with Mr. Cherkewich. M.M. testified that she showed Mr. Cherkewich paragraph 17 of the Order and she also advised him that she had received direction from Dan Shapiro about the need for her to see Mr. Cherkewich's retainer agreement. Upon hearing this, Mr. Cherkewich became very upset and angry, telling her that if she was a seasoned adjudicator, she would know better. Mr. Cherkewich repeated that he "did not do" retainer agreements. According to M.M., Mr. Cherkewich then stated "You can tell Dan Shapiro to shove it up his ass". With that, Mr. Cherkewich walked out of the room only to return and suggest to M.M. that she should get Mr. Shapiro on the telephone. M.M. was aware that Mr. Shapiro was on a plane to British Columbia. She decided she would telephone an experienced adjudicator in the province to discuss this. She did that and based on the advice received, M.M. determined that she would resume the hearing and deal with the retainer agreement issue on the record.

13. The opening of the hearing and the transcript for that is at L-1, tab 5. On the record, M.M. asked Mr. Cherkewich to provide his thoughts regarding her request for the retainer agreement. The flavours of Mr. Cherkewich's submissions are set out at pages 2 and 3:

> This morning it was sprung on me that I am not going to get paid for my work on this file or being at this hearing. That comes from a missive issued apparently by Mr. Shapiro to the adjudicator.
> . . .
> . . . So it catches me totally off guard today when I'm told, read the riot act, so to speak, from Mr. Shapiro and have a missive thrown at me that I'm not going to get paid unless I have this agreement with my client, and disconcerting, unacceptable, and if I'm not getting paid, and it's not about money, it's about principle. If I'm not getting paid, why should I be here?

14. At page 4 of the transcript, M.M. made it clear that the issue was not whether Mr. Cherkewich would get paid but the issue was the need for the retainer agreement as required under the court order. Mr. Cherkewich did retract his submissions about not being paid.

15. The hearing then stood down and off the record. Mr. Cherkewich left the room and M.M. understood that he was meeting with his client. Within minutes, Mr. Cherkewich and his client K.S. returned. She described Mr. Cherkewich as angry and irate when he left the room yet when he and his client came back in, he "seemed kind of smug and happy". Mr. Cherkewich approached M.M. and placed a piece of paper in front of her. She could see that the paper was a piece of toilet paper with handwriting on it. L-1, tab 6 is a photocopy of the toilet paper piece. The original toilet paper with handwriting was tendered as L-2. A photocopy of L-2 is attached to this decision. The handwriting reads:

> To Dan Shipiro (sic) –
> "Retainer Agt I agree with Ron Cherkewich that his payment for being my lawyer in the IAP process will be the 15% of award payable by Canada plus taxes plus disbursements. I am aware I can have his account taxed.
> November 16/2011

16. The toilet paper bears the signature of K.S., the claimant, and Mr. Cherkewich.

17. M.M. was both personally and professionally offended by this. It was very difficult for her to stay composed throughout the hearing as she felt disrespected and humiliated. M.M. testified she also felt horrible for the claimant. To use M.M.'s words "It took everything in me to stay calm, focused and compassionate for her". According to M.M. and at every break through the hearing, Mr. Cherkewich was "at me again about the fees" continually asking her how she would feel if she was not getting paid when everyone else was.

18. The hearing concluded with a "short form agreement" which the Committee understands is similar to a consent order. M.M. conducted a fee assessment using the toilet paper agreement as the retainer agreement.

19. In cross-examination, Mr. Cherkewich suggested that he had apologized to M.M. a number of times after the incident. M.M. maintained she did not recall hearing any apologies from Mr. Cherkewich throughout the hearing. L-1, tab 14 is an email dated November 22, 2011 from B.W. who is identified as Mr. Cherkewich's assistant. The email is directed to M.M. and counsel to Canada who participated in the hearing. The email in its entirety reads:

> Good Morning.
> May I please have a copy of the Decision as Ron's copy was given to K.S.
> Also, Ron wanted me to express his apologies again and thank you for your patience the other day.

20. In cross-examination, M.M. conceded that the comment Mr. Cherkewich had made about Mr. Shapiro was directed to Mr. Shapiro and not her but as she put it, "I was on the receiving end".

N.S.R. AND M.R.:

21. N.S.R was identified as an art therapist. M.R. works with the Prince Albert Indian Metis Friendship Centre and assists claimants through the IAP process. Both these individuals were present with Mr. Cherkewich on November 16, 2011 at the hearing for K.S.

22. N.S.R worked with K.S. and assisted her in filling out the application form. She described K.S. as fragile and incredibly nervous that morning but at the same time, K.S. was focused on getting through the process. She was in a breakout room with K.S. when Mr. Cherkewich entered the room, advising that the adjudicator wanted a retainer agreement. N.S.R. described Mr. Cherkewich as being fairly calm as he explained to K.S. her options including proceeding without him. It was Mr. Cherkewich's idea to write out a retainer agreement on toilet paper. N.S.R. recalled that the claimant smiled at that idea and she smiled when she signed the toilet paper.

23. N.S.R. described the "amazing rapport" between the claimant and M.M., characterizing this as one of the better hearings she had been involved in because of M.M.'s interview of the claimant. N.S.R. testified that at the end of the hearing, she saw Mr. Cherkewich approach M.M. and heard him state that she had done a good job and that he was sorry about the difficulties at the beginning.

24. M.R.'s testimony was generally the same.

RONALD CHERKEWICH:

25. Mr. Cherkewich has 44 years of practice experience. He has practiced in Prince Albert since 1970.

26. Mr. Cherkewich opened his testimony with the statement that he was "not proud of what happened", but he had an explanation to put matters into context. Mr. Cherkewich explained that the K.S. hearing was approximately the 60th IAP case he had conducted. In his view had this hearing been handled by a senior adjudicator, the problems about the retainer agreement would

not have occurred. He described the retainer agreement issue as equivalent to being "cold cocked" and Mr. Cherkewich admitted that he got himself in trouble as a result.

27. Mr. Cherkewich fairly stated that M.M. had done an excellent job in conducting the hearing. It was never his intention nor did he in fact direct one negative comment to her but rather, to her "mentors" or "handlers".

28. Mr. Cherkewich recollected that he apologized to M.M. at least twice during the hearing and as he was feeling apologetic two days later, his assistant sent the email earlier referred to (L-1, tab 14). Mr. Cherkewich stated he "probably owes Dan Shapiro an apology of a different sort" and hoped to someday discuss this with him over a beer.

29. He regrets the use of toilet paper, characterizing this as a "dumb joke" and a "stupid thing" in an effort to relieve the tension. He testified he had one goal in mind and that was to get the claimant through the process. In response to a question from one of the Committee members, Mr. Cherkewich admitted that the use of toilet paper was intended to make a statement.

30. In his direct testimony, Mr. Cherkewich did not address M.M.'s evidence about the statement Mr. Cherkewich made to her regarding Mr. Shapiro. One of the Committee members directly asked Mr. Cherkewich whether he had made the comment. Mr. Cherkewich denied that he would use that phrase as it is not something he says. Rather, he admits he uses the phrase "where the sun doesn't shine". His recollection is that he would have used those words in reference to Mr. Shapiro and the court order. Mr. Cherkewich conceded both in response to questions from the Committee and in cross-examination that such phraseology was not right or appropriate. Asked whether he would use such words to a judge, Mr. Cherkewich's simple response was that he had no suicidal tendencies and nor would he be that bold with a judge.

LEGAL PROFESSION ACT AND CODE OF PROFESSIONAL CONDUCT

31. "Conduct unbecoming" is defined as follows in the Legal Profession Act, 1990:

> 2(d) "conduct unbecoming" means any act or conduct, whether or not disgraceful or dishonourable, that:
> (i) is inimical to the best interests of the public or the members; or
> (ii) tends to harm the standing of the legal profession generally;
> and includes the practice of law in an incompetent manner where it is within the scope of subclause (i) or (ii);

32. The Hearing Committee in the recent decision of Joel Hesje and Timothy Froese (October 4, 2013) makes the following helpful comments regarding "conduct unbecoming" at pages 10 and 11:

> 54. Similar to other legislation governing professions, what acts or conduct constitutes 'conduct unbecoming' is not specified. These 'acts or conduct' are determined on a case-by-case basis and evolve with the standards of practice and ethics. As we observed in our ruling on the Demand for Particulars, the obligations of a lawyer are not reducible to a list of 'dos' and 'don'ts,' and these

> obligations require of lawyers a consistent and complex process of making choices.
>
> 55. As stated by the Saskatchewan Court of Appeal in *Law Society of Saskatchewan v Merchant*, (2009) SKCA 33, 'conduct unbecoming' is the subject of an expansive definition and may be established through intention, conduct, negligent conduct or total insensitivity to the requirements of acceptable practice. Professional misconduct is considered a strict liability offence.

33. The *Code of Professional Conduct* is a guide to the acts or omissions that might amount to "conduct unbecoming". In this case, count 1 alleges a breach of Chapter IX of the *Code of Professional Conduct*. Chapter IX of the Code is entitled "The Lawyer as Advocate" and the rule is as follows:

> When acting as an advocate, the lawyer must treat the court or tribunal with courtesy and respect and must represent the client resolutely, honourably and within the time limits of the law.

34. Count 2 alleges a breach of Chapter XVI of the Code. Chapter XVI is entitled "Responsibility to Lawyers and Others". The rule is as follows:

> The lawyer's conduct toward all persons with whom the lawyer comes into contact in practice should be characterized by courtesy and good faith.
>
> 35. There are guiding principles listed to Chapter XVI. This excerpt from number 2 would appear to be applicable:
>
> > 2. . . . The presence of personal animosity between lawyers involved in a matter may cause their judgment to be clouded by emotional factors and hinder the proper resolution of the matter. Personal remarks or references between them should be avoided. Haranguing or offensive tactics interfere with the orderly administration of justice and have no place in our legal system.

ANALYSIS

36. The essential facts are not in dispute. In argument, counsel for the Investigation Committee indicated there were two factual incidents underlying the charges. The first was the statement made by Mr. Cherkewich to M.M. off the record and outside the hearing room as to what Mr. Shapiro might do with the order. The second incident was Mr. Cherkewich's preparation and use of the toilet paper "retainer agreement". On the first matter, M.M. was adamant in her testimony as to the words Mr. Cherkewich used regarding Mr. Shapiro, the court order and what might be done with it. She testified that she vividly remembers the words he used because she was embarrassed to tell Mr. Shapiro about this and she agonized about it in her drive back to Saskatoon. According to Mr. Cherkewich, this is not phraseology he would use but rather, he uses the phrase "where the sun does not shine" and that is what he would have said to

M.M. However, Mr. Cherkewich fairly admitted that the intention with either statement is the same and the distinction is really one without a difference.

37. There is no dispute that Mr. Cherkewich wrote out a "retainer agreement" on toilet paper and that he and his client signed that and presented it to M.M. during the hearing.

38. Before setting out findings of fact and the application of the legal principles to those facts, the Committee will address a threshold issue raised by Mr. Cherkewich regarding count 1 and Chapter IX of the Code. Chapter IX uses the words "court or tribunal". Mr. Cherkewich argues that M.M. is neither but instead she is simply a lawyer under contract to the Federal government. Mr. Cherkewich points out that the adjudicator has no powers to cite for contempt, an adjudicator's decision is not subject to judicial review and an adjudicator cannot issue subpoenas. In summary, Mr. Cherkewich argues that an adjudicator has no "judicial persona" and as such, Chapter IX cannot apply.

39. In response, the Investigation Committee argues that a "tribunal" can come in a variety of forms. Counsel points to commentary 18 of Chapter IX which is as follows:

> Scope of Rule
> 18. The principles of this Rule apply generally to the lawyer as advocate and therefore extend not only to court proceedings but also to appearances and proceedings before boards, administrative tribunals and other bodies, regardless of their function or the informality of their procedures.

40. The Committee agrees with the Investigation Committee that the purpose of the IAP process was to stand as a replacement for the traditional judicial process and that IAP adjudicators are quasi-judicial tribunals. The definition of "quasi-judicial" in the Dictionary of Canadian Law, 4th Edition is:

> 'Quasi-judicial' describes functions which are judicial in nature but performed by a tribunal. The hearing of a dispute, investigation, inquiry into a matter, determining facts, and the exercise of discretion in a judicial matter are examples of this type of function.

41. A similar definition is seen in the Canadian Law Dictionary:

> 'Quasi-judicial' a term used to describe the acts of persons, bodies or tribunals that are not strictly judicial, in the sense of performing the functions of courts or judges, but are similar in that they have authority or discretion to decide important issues affecting the rights and obligations of opposing parties, and whose decisions have the effect of imposing serious sanctions or consequences on the parties directly or indirectly affected thereby. Generally, quasi-judicial boards and tribunals are under a duty to act in accordance with the rules of natural justice.

42. IAP adjudicators make crucial decisions about the rights of claimants and the obligations of Canada and they do so based on the facts presented to them in a quasi-judicial hearing. The fact that the process is non-adversarial or that the adjudicator may not have some of the traditional powers of a court does not diminish the nature of the proceeding or the status of the adjudicator.

43. The Committee finds that M.M. as an adjudicator is a "tribunal" for the purposes of Chapter IX of the Code.

44. Chapter IX of the Code requires that lawyers must treat courts or tribunals with "courtesy and respect". Using toilet paper to write out an agreement which has legal consequences and significance was intended to send one message and one message only and that was disrespect to M.M.

45. Much of Mr. Cherkewich's evidence and his arguments focused on the correctness of his position about the request for a retainer agreement. Even if Mr. Cherkewich is correct about the timing of the retainer agreement request or whether such a request should have been made at all, this begs the question. In the course of any proceeding, a judge, an adjudicator, a tribunal member or a mediator may make rulings or comments that frustrate counsel. Those rulings or comments may even be wrong. However, that is not a license for a lawyer to respond in a rude or disrespectful way. Preparing a legal document on toilet paper and having a client sign it can only be seen as "total insensitivity to the requirements of acceptable practice" to use the words of the Court of Appeal in Merchant.

46. Mr. Cherkewich's conduct is a marked departure from conduct expected of lawyers. Mr. Cherkewich is a senior practitioner and his carriage and conduct should be a positive example to other less senior members of the profession. Instead, Mr. Cherkewich's conduct with the toilet paper agreement brought the profession and the administration of justice into disrepute.

47. As to the words Mr. Cherkewich used to M.M. about the Order and what Mr. Shapiro might do with it, the Committee comes to a different conclusion. Leaving aside the phraseology used, the statement was not directed to M.M. nor was it about her. The statement was made in private and off the record. The comments were ill advised but were not part of a pattern of similar statements. While it may be an understatement to say that Mr. Cherkewich should not be commended for his statement, standing alone the Committee finds that the comment does not rise to the level of conduct unbecoming. In the end, however, the Committee's determination on this does not affect the final result.

48. Count 2 is an alternative to count 1 and the difference is that count 2 deals with M.M.'s status as a fellow member of the Law Society. Under Chapter XVI, the key words are "courtesy and good faith". Implicit in the concepts of courtesy and good faith is civility.

49. In *Law Society of Upper Canada v Mary Martha Coady* 2009 ONLSHP 51, the hearing panel stated that a lawyer:

> . . . does not have an unfettered right to say or write anything she pleases to advance her cause or the cause of her client. The privilege of practising law comes with responsibilities to clients, to the court, to the public and even to opposing counsel.

50. In *Law Society of Upper Canada v Groia*, 2012 ONLSHP 94, the hearing panel stated as follows:

> 63. The requirement of civility is more than good manners in the courtroom and practice. Rather, the rationale underlying the requirement of civility reflects a concern with the effect of incivility on the proper functioning of the administration of justice and public perception of the legal profession.
> . . .
> 65. Our system of justice is based on the premise that legal disputes should be resolved rationally in an environment of calm and measured deliberation, free from hostility, emotion, and other irrational or disruptive influences, incivility and discourteous conduct detracts from this environment, undermines public confidence and impedes the administration of justice and the application of the rule of law.

51. The Committee finds that count 1 to the Amended Formal Complaint is well founded and Mr. Cherkewich is guilty of conduct unbecoming. M.M., in her capacity as an IAP adjudicator, is a "tribunal" deserving of courtesy and respect. Mr. Cherkewich's creation of a retainer agreement on toilet paper and proffering that to M.M. as a legal agreement was disrespectful and offensive. It was a step designed to offend and exceeds "bad manners" or "a joke".

52. In the event this Committee is wrong in concluding that M.M. is a "tribunal" such that Chapter IX of the *Code of Professional Conduct* applies, the Committee finds that the alternative count being count number 2 is well founded for the reasons set out in this decision. The Committee finds that Mr. Cherkewich's conduct with the retainer agreement breached all reasonable standards of courtesy, good faith and civility.

DATED at Regina, Saskatchewan, this 28th day of October, 2013.

"Darcia Schirr, Q.C."
Hearing Committee Chair

DATED at Saskatoon, Saskatchewan, this 28th day of October, 2013.

"Laura Lacoursiere"
Hearing Committee Member

DATED at Saskatoon, Saskatchewan, this 28th day of October, 2013.

"Jay Watson"
Hearing Committee Member

DECISION OF THE HEARING COMMITTEE REGARDING PENALTY

Counsel: Timothy Huber for the Law Society of Saskatchewan Investigation Committee
Ronald Cherkewich for himself

Hearing Date: December 19, 2013

53. In a Decision dated October 28, 2013, the Hearing Committee determined that Ronald Cherkewich was guilty of conduct unbecoming in that he:

> **1. Did, on or about November 16, 2011, fail to treat M.M., an adjudicator presiding over an Indian Residential School Independent Assessment proceeding, with courtesy and respect by conducting himself in a rude and/or provocative manner.**
>
> **Reference *Code of Professional Conduct* Chapter IX**

54. The Hearing Committee reconvened on December 19, 2013, to hear submissions as to the appropriate sanction or penalty to be imposed. The hearing was conducted by telephone.

55. In this case, counsel for the Investigation Committee and Mr. Cherkewich presented a joint submission as to penalty consisting of the following:

a. A reprimand;
b. A fine of $500.00;
c. Costs in the amount of $10,000.00.

56. Counsel for the Investigation Committee pointed out that there was a relative lack of jurisprudence for discipline hearings involving rude or disrespectful conduct to a judge or tribunal. In *Dore v. Barreau de Quebec*, [2012] 1 SCR 395, Dore wrote an extremely disrespectful letter to a judge after the judge had berated and excoriated Dore through court proceedings. Dore was found guilty of conduct unbecoming and received a 21 day suspension. Dore is the highwater mark for rude and provocative conduct directed to a judge.

57. Given the lack of jurisprudence involving rude conduct by a lawyer to a judge, the cases on incivility between counsel are of assistance.

58. Counsel for the Investigation Committee and Mr. Cherkewich both relied on a decision from the Law Society of British Columbia involving *Gregory John Lanning* 2009 LSBC 02. The *Lanning* case is helpful as it reviews other Canadian precedents that deal with incivility between counsel and particularly, cases where such behaviour or conduct was fairly isolated as opposed to a protracted course of conduct. These cases referred to in the *Lanning* decision are of assistance:

> **[26] In *Law Society of Alberta v. Pozniuk*, [2002] L.S.D.D. 55, the lawyer wrote to a fellow lawyer and called him "clueless". That Panel imposed a reprimand as the case involved a single incident without the use of profanity.**

[27] In *Law Society of BC v. Barker*, [1993] L.S.D.D. 189, the lawyer lost his temper in the course of a telephone conversation with an adjuster and used abusive language. Prior to hearing, the lawyer had apologized. The matter proceeded by admission under a predecessor to Rule 4-22. The Panel imposed a reprimand, a fine of $400 and costs of $500.

[28] In *Law Society of BC v. MacAdam*, [1997] L.S.D.D. 55, the Panel dealt with several complaints. Two of them pertained to offensive remarks made to the client and to a probation officer. Again, in a citation dealt with under a predecessor to Rule 4-22, the Panel imposed a reprimand, an order to write letters of apology, a fine of $500 and costs of $500.00.

59. Mr. Cherkewich has practiced law for 44 years and he has no prior discipline record. The events that underlie the finding of conduct unbecoming occurred two years ago and Mr. Cherkewich has not been the subject of any complaints to the Law Society in the interim. After the IAP hearing, Mr. Cherkewich, through his assistant, offered an apology to MM in an email. If Mr. Cherkewich had personally provided a meaningful apology to MM, he may have avoided the complaint and these proceedings.

60. The Hearing Committee is satisfied that the joint submission meets the principles of sanctions in professional disciplinary proceedings and in particular, serves the purposes of both general and specific deterrence. The joint submission is reasonable, fair and not contrary to the public interest.

61. As such, the Hearing Committee makes the following order:

a. Ronald Cherkewich shall receive a reprimand;
b. Ronald Cherkewich shall pay a fine in the amount of $500 which shall be paid on or before April 1, 2014;
c. Ronald Cherkewich shall pay costs of these proceedings which shall be fixed in the amount of $10,000. The costs shall be paid on or before April 1, 2014.

DATED at Regina, Saskatchewan, this 6th day of February, 2014.

"Darcia Schirr, Q.C."
Hearing Committee Chair

DATED at Saskatoon, Saskatchewan, this 4th day of February, 2014.

"Laura Lacoursiere"
Hearing Committee Member

DATED at Saskatoon, Saskatchewan, this 4th day of February, 2014.

"Jay Watson"
Hearing Committee Member