



2nd Annual Civility Lunch

*“Do as adversaries do in law, strive mightily,
and eat and drink as friends”*

– Wm. Shakespeare

December 2, 2020

Introduction

Welcome

Purpose



Agenda

Introduction (5 min)

Part 1 : What is Civility – The Law & Related Concepts (25 min)

– Honourable Judge James Sutherland, BCPC

Part 2: Civility – Benchers' Thoughts (30 min)

– Pinder Cheema QC, & Phil Riddell, QC

Part 3: Civility Discussion Scenarios (1 hour)

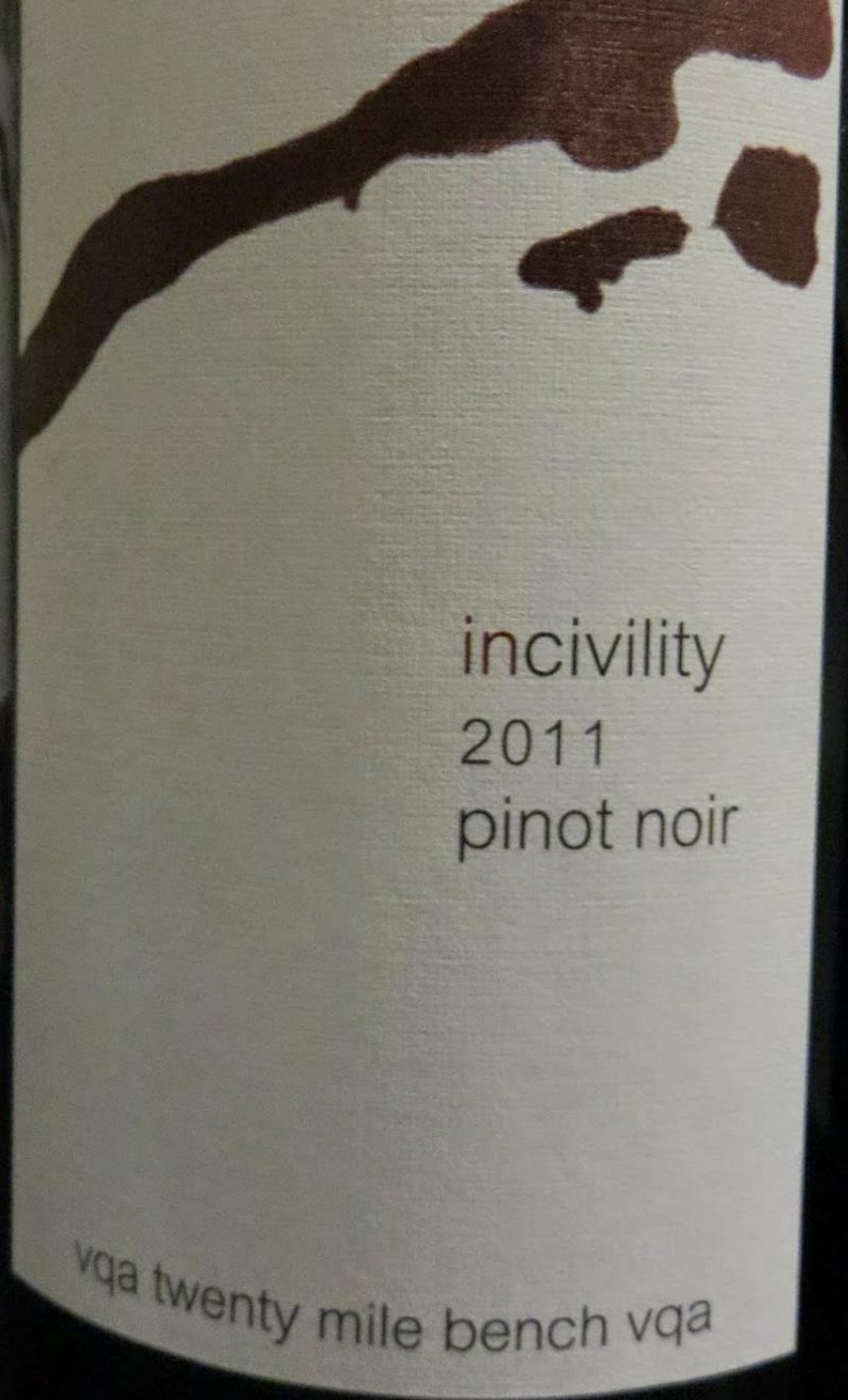
- Justice Jennifer Duncan, BCSC
- Kasandra Cronin, Q.C.
- Don Montrichard,
- Alexandra (Alix) Rice

Closing Remarks & Trivia



Part 1 – The Law, and Related Concepts

*Groia v. Law Society of Upper
Canada, 2018 SCC 27*



What is Civility?

civility

[səˈvɪlədē] 

NOUN

formal politeness and courtesy in behavior or speech.

"I hope we can treat each other with civility and respect"

synonyms: courtesy · courteousness · politeness · good manners · mannerliness · gentlemanliness · chivalry · gallantry · graciousness · consideration · respect · gentility · urbanity · [more]



Part 2 - Benchers' Thoughts on Civility

- Calls that come in
- Calls that go out
- Hearings/investigations

You should wait and think about it before sending the letter

WITHOUT PREJUDICE OR ADMISSION

Sir,

I have just left the Court. Just a few minutes ago, as you hid behind your status like a coward, you made comments about me that were both unjust and unjustified, scattering them here and there in a decision the good faith of which will most likely be argued before our Court of Appeal.

Because you ducked out quickly and refused to hear me, I have chosen to write a letter as an entirely personal response to the equally personal remarks you permitted yourself to make about me. This letter, therefore, is from man to man and is outside the ambit of my profession and your functions.

If no one has ever told you the following, then it is high time someone did. Your chronic inability to master any social skills (to use an expression in English, that language you love so much), which has caused you to become pedantic, aggressive and petty in your daily life, makes no difference to me; after all, it seems to suit you well.

Your deliberate expression of these character traits while exercising your judicial functions, however, and your having made them your trademark concern me a great deal, and I feel that it is appropriate to tell you.

Doré v. Barreau
du Québec, 2012 SCC 12

Your legal knowledge, which appears to have earned the approval of a certain number of your colleagues, is far from sufficient to make you the person you could or should be professionally. Your determination to obliterate any humanity from your judicial position, your essentially non-existent listening skills, and your propensity to use your court — where you lack the courage to hear opinions contrary to your own — to launch ugly, vulgar, and mean personal attacks not only confirms that you are as loathsome as suspected, but also casts shame on you as a judge, that most extraordinarily important function that was entrusted to you.

I would have very much liked to say this to your face, but I highly doubt that, given your arrogance, you are able to face your detractors without hiding behind your judicial position.

Worst of all, you possess the most appalling of all defects for a man in your position: You are fundamentally unjust. I doubt that that will ever change.

Sincerely,
Gilles Doré

P.S. As this letter is purely personal, I see no need to distribute it.

Part 3 -
Discussion
Scenarios



Scenario #1 - Overwrought Counsel

You attend at court for trial (or other big hearing) and it is clear that opposing counsel is overwrought as a result of an acute personal matter.

You are the Crown – what can you do?

You are the Defence – what can you do? (does it matter whether your client is in custody or out?)

Scenario #2 - Junior Crown

You are a junior Crown. Opposing counsel has suggested a resolution plan that seems a little too sweet, outside the case law range and possibly contrary to policy. You are not comfortable with it and as the only Crown for miles, get defensive and haughty and say “no” and press on to a trial that probably did not need to occur

How could you have dealt with this differently?

What if the roles were reversed?

Scenario #3 – “Sort it out”

You are in a trial that has become tense between counsel. You will only speak to your friend in Court and on the record. There is an issue that needs to be sorted out before the proceedings can continue. The Judge tells counsel to “sort it out and come back”.

What do you do?

Scenario #4 – Small Community

There is an opposing lawyer in your local community with whom you do not get along. It has descended to the level of yelling in court and making personal comments on the record. Not being on the same file in the future is not an option. It is unpleasant for each of you and for the court (for everyone around you actually!)

What can you do?

Scenario # 5 – Sam & Ralph

You and opposing counsel have just been through a lengthy hearing. It took a lot out of each of you. Opposing counsel did a nice job on their last submissions – so nice that it will completely shut down your argument.

What should you do?



Scenario #6 – “Card laid is a card played”

Defence counsel inadvertently, due to momentary distraction, does not object to an exhibit being admitted at trial. The issue is raised with the Court immediately thereafter, but Crown Counsel insists that once the exhibit is admitted into evidence it is “in”.

Is that an example of civility?

What if the roles were reversed (e.g. due to oversight, the Crown fails to prove jurisdiction before closing its case)?

Scenario #7 – Unique Challenges

What are some unique characteristics of sexual assault trials that present particular challenges to maintaining civility in the Courtroom?

Are there different challenges for defence counsel and Crown Counsel?

Scenario #8 – Persistent Late *Charter* Notice

Defence counsel provides you with late *Charter* notice shortly before a scheduled *voir dire*. You work day and night in the week leading up to the *voir dire* in order to ensure that you are prepared to deal with all of the issues. On the first day of trial, the defence counsel raises an additional *Charter* issue.

As Crown counsel, what do you do? Is the provision of late notice an acceptable strategic practice for defence counsel? Is that civil?

Scenario #9 – “Misleading the Court”

In the evening, following a long day in court, you receive an email from opposing counsel accusing you of misleading the court on a particular issue.

How do you respond?

Scenario #10 – Nice?

Is civility within the profession more than just a “nice thing to do”? Or, is it something more than that? How does civility relate to the integrity of the system as a whole?



civility

In Closing ...

formal politeness and cour

"I hope we can treat each o

Synonyms. courtesy - courtes

chivalry - gallantry





CPD Credit

“Courthouse Libraries BC: Civility in the Criminal Bar: 2nd Annual Lunch & Learn”