

Business**Convocation 'civility' | Joseph Groia**By **Joseph Groia**

Joseph Groia

(December 14, 2022, 1:12 PM EST) -- "Candidly, let's release this turd to the public. Let's show them what you guys have been working on. That's transparent." Bencher Jared Brown, Convocation Transcript June 28, 2022."

Not very long ago, being a bencher of the Law Society of Upper Canada [LSUC] or the Law Society of Ontario [LSO] was one of the most important roles in the legal profession. Benchers of the LSO were held to the highest ethical standards. They were expected to always act with integrity and in the public interest. They were the role models and leaders of the profession and shaped its future at Convocation meetings. The gravity of these meetings is reflected in the bylaws of the LSO. Under Bylaw 3, s. 88 the treasurer is required to maintain order, decorum, civility and courtesy at Convocation. Bylaw 3, s. 89 requires that benchers are not to interrupt her when she is speaking.

Civility is a subject I know a lot about. When I was defence counsel for John Felderhof in the Bre-X Minerals case, the Ontario Securities Commission [OSC] accused me of uncivil conduct as part of their application to remove the trial judge for his alleged failure to properly manage the trial. The OSC lost in the Superior Court and in the Ontario Court of Appeal. In 2007, they also lost the trial itself and Mr. Felderhof was acquitted, on the merits, of all charges (*R. v. Felderhof* [2007] O.J. No. 2974).

In 2009, the LSUC charged me with several counts of professional misconduct for my alleged incivility during the same trial. It did so without reading the trial transcripts. The evidence didn't matter. The LSUC accused me of calling the OSC "the government," claimed that I had been "sarcastic" and, after a lengthy hearing, suspended my right to practise law for 60 days. They said that my attempt to defend myself was an abuse of process. In June 2018, the Supreme Court of Canada overturned my conviction and dismissed all the charges against me (*Groia v. Law Society of Upper Canada* [2018] 1 S.C.R. 772).

It has sometimes been said that my victory in the Supreme Court killed the civility movement. However, given what we now observe at Convocation, it is time to reconsider that view.

In 2015, I was honoured to be elected as a bencher. I thought about all of the great lawyers who had also been benchers before me including; G. Arthur Martin, John J. Robinette, Charles Dubin, Bert MacKinnon, Brendan O'Brien, Syd Robins, Laura Legge and Earl Cherniak. I knew that it would be a privilege to sit at the same table as they had and to try to make some small contributions to the legal profession in Ontario. I did sit at that table for a few years; until we moved into the old bar admission course space. Times have changed, and not for the better. I am glad that the old Convocation table is not the site for today's meetings.

The last four years have been exceedingly difficult ones at Convocation. The determined efforts of the StopSOP22 benchers, who were elected in 2019 on a one issue platform, has disrupted the work of Convocation. Moving ahead with necessary reforms is difficult when 22 benchers frequently unite to oppose progressive change. That same group now plans to run again under a new name: FullStop, or as I prefer to call them, the DeadEnders. Another group, called the Bencher Good Governance Coalition, will run against them. Whether you call these groups a slate, party, convoy, or coalition, the sad and harsh reality of this election is that the profession will not be asked to elect, as it once

did, individual leaders but rather will be forced to vote for a collective in which some marginal benchers will surely prevail.

We have started to see what our dystopian future will look like: At the September Convocation, Sam Goldstein brought a motion to repeal the Bencher Code of Conduct. The LSO is defending a lawsuit brought by Murray Klippenstein in which he alleges that his duties as a bencher were impaired by the failure to provide him with voluminous amounts of material about the LSO's Equity Diversity and Inclusion [EDI] work. It was an EDI report that prompted Jared Brown's comment quoted above. At the November Convocation, there was a shouting match with the treasurer. There are other egregious examples of bencher misconduct that the LSO has not disclosed. My duties as a bencher do not allow me to say more about these secret, in-camera, matters.

The last Convocation in 2022 was held on Dec. 1. It was a case study on incivility and the disregard of the public interest. John Fagan had a shouting match with the treasurer and was asked to leave Convocation. Sam Goldstein announced that he was serving the treasurer and the LSO with a libel and slander notice, and then proceeded to do so. Robert Burd and Julian Falconer brought last-minute motions to materially change the years of work on the Family Law Service Provider Licence [FLSP]. These motions were ruled out of order, and one was unsuccessfully appealed. I expect that at the next Convocation we will be asked to revisit our decision to approve the FLSP. Only in camera were we asked to oppose the expropriation of some of Osgoode Hall's property by Metrolinx. We also released the third quarter financial statements that foreshadow a financial crisis for the Compensation Fund.

These are indeed troubling times. Civility is at an all-time low at the LSO. The greatest accomplishment of our dysfunctional bench was navigating the COVID-19 pandemic. There is a bencher election next year. If enough of the profession casts their vote, we can have a new bench worthy again of the profession's admiration and respect. However, with the introduction of party politics, I fear that we will not elect a thoughtful and responsible bench and that we may well see the end of self-regulation as a result.

We need to get Convocation back on the rails and restore civility and decorum at our meetings. If this does not happen then I recommend that we adjourn Convocation meetings until June 2023 when the profession will have had their say and when there will be a new bench with a new treasurer. In my respectful view, forgoing Convocation would be far better than continuing the spectacle we are seeing today.

Joseph Groia was called to Ontario's bar in 1981. He was a founder of Groia and Company where he has been a principal for over 20 years. He is a frequent speaker at conferences, law schools and seminars where he teaches about civility, legal ethics, securities regulation and more. He has held a position as a bencher of the Law Society of Ontario since 2015.

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