

Report on

Civility and Professionalism in the Legal Profession

December 2023

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Message from the President

The Toronto Lawyers Association (TLA) is pleased to issue this Report on Civility and Professionalism (the "Report"). As we previously announced in July 2023 and following feedback received from the local bar, the TLA undertook to study the state of civility and professionalism in our profession (the "Project"). The TLA tasked the Membership Committee to champion the Project and oversee the completion of this Report.

The feedback shared with the TLA informed the TLA's hypothesis that there was a palpable change in the way lawyers engaged with each other, the judiciary, and the justice system post-pandemic. The hypothesis was that the change was not a positive one for civility and professionalism. As a result, the TLA undertook to engage with the local bar through a survey and facilitated sessions to measure the pulse of the profession and solve for identified gaps on the state of civility and professionalism. This process was completed on October 3, 2023 with the TLA then engaged in the drafting of this Report.

The TLA is pleased to share the results of this Project with the legal community. In doing so, the TLA commits to engage with the broader legal community to continue to uphold civility and professionalism in our profession. The TLA recognizes that such values are at the core of our profession.

In closing, I would like to thank the TLA Membership Committee for its tireless work on this Project. On behalf of the Membership Committee and the TLA, we invite you to join the TLA in its commitment to civility and professionalism as we welcome 2024 and beyond.

Sincerely,

A handwritten signature in black ink, appearing to be 'Aitan Lerner', with a large, stylized flourish at the end.

Aitan Lerner

TLA President

Executive Summary

Civility and professionalism are **core tenets of the legal profession**. Throughout early 2023, in addition to the experiences and observations of members of the Toronto Lawyers Association (TLA), the organization frequently received anecdotal references from its members suggesting a sense that post-pandemic, the legal profession was experiencing a decline in civility and professionalism. In some ways, members reported that the pandemic caused a shock in the way the profession engaged with each other, the judiciary, clients, and the public.

As an organization committed to demonstrate **thought leadership**, the TLA undertook to review the post-pandemic state of civility and professionalism, and to determine whether the profession felt a decrease in civility and professionalism, and if so why. The TLA was motivated by a desire to solve for any identified gaps.

As part of this project, the TLA engaged in an expansive **literature review, comprehensive survey** of members and the broader profession, **facilitated discussions** with members of the profession, including lawyers, mental health professionals, regulatory representatives, and members of the judiciary. The foregoing formed the data collection phase of this project, which was completed **October 3, 2023**. Following October 3, 2023, the TLA was engaged in drafting this **Report**, by reviewing and analyzing the information and feedback received. The TLA, however, acknowledges that as of **October 7, 2023**, another shock was felt by the local bar following the horrific terrorist attack by Hamas in Israel, and the ensuing military action in Gaza.

Undoubtedly as pointed out by the **University of Ottawa Faculty of Law Muslim and Jewish Law Student Associations**, calling on all to focus on “how our shared pain unifies us, instead of letting hatred divide us”, the ongoing situation in the Middle East has caused raw emotion. The *Law Times*ⁱ recently reported that the student associations’ expression of fellowship inspired another letter, signed by more than 1,000 legal

“I feel that overall there has been a general **decline in civility** and to be honest, I too have been guilty of such behaviour. I feel that lawyers are sharper with one another and often attempt to impose deadlines that can't be met without moving heaven and earth.”

“I find that the apprehension of uncivil behaviour from so many potential sources (ex. opposing counsel, judges, clients, and bosses) causes me to dread going to work or opening emails, burn out, and lose confidence in myself...[...]”

community members, to “urge Canadians to tone down the anger in the public discourse on the Middle East”. The TLA acknowledges these emotions and joins these University of Ottawa law student associations to denounce hate and condemn violence in all forms, recognizing the devastation and destruction it causes.

If our experience in studying civility in the context of what we set out to do tells us anything, it is that civility and professionalism are at the **core of our profession** and the **way we engage with one another**. No matter the future challenges that may impact the profession, we must do our utmost to uphold these values in perpetuity. The profession depends on it.

While one **potential challenge is that of defining “civility and professionalism”**, the TLA did not let this deter its review. Recognizing the definition is “fluid and changes based on context and facts”, the TLA moved forward with its Project, recognizing the need for the conversation.

Indeed, the Project affirmed that the issue of a sense of decreasing civility and professionalism was **not a new theme** post-pandemic. Many people involved in the legal system, lawyers, students, judges, clients, the public, were anecdotally reporting a negativity that was impacting mental health and their engagement in the profession. Symposia, reports and discussions had been initiated **as early as 2000** on the topic. However, there was a sense that things were “different”: the global pandemic, professional and cultural changes and broader world events had shifted the incidents and impacted civility and professionalism.

Our starting point was to look at the **Law Society of Ontario (LSO)’s Rules of Professional Conduct**, with several of our guiding rules directly referencing elements of civility and professionalism. As one discussion participant reminded us, as lawyers, we do have specific professional obligations in this regard, above and beyond any general expectation by members of the public. Similarly, as early on as entrants to legal education, law students are expected by the **Federation of Law Society of Canada (FLSC)’s National Requirement** to be introduced to elements of professionalism in their legal education.

And so, given that this is part of both our **earliest legal training** as students, and an **expected part of our professional role once Called to the Bar**, does the profession still observe and experience uncivil and unprofessional behaviour, and if so, why? More importantly, what can be done to improve the situation?

Both the survey results and the facilitated discussion affirmed that unfortunately **uncivil and unprofessional conduct is commonly observed** in the profession. Many examples were offered, either of direct experiences or observations, ranging from circumstances related to specific practice elements (“excessive rigidity of positioning in a negotiation” or “not receiving responses at all to correspondence”) to general behaviour such as inappropriate interruptions or aggressive or polarized comments and intimidating or unprepared behaviour.

When asked to consider **why this was occurring**, a variety of themes arose, including the impact of regional or geographic differences; the business of law and competition factors; fewer opportunities for mentorship, training and for interpersonal interactions (loss of “3rd spaces”); technology and social media; and shifts in culture and global changes in standards and expectations of behaviour.

Having a sense of the “what” and the “why” was important to the TLA, as was offering an opportunity for some **creative input and reflection on solutions**. As a profession, our diversity and experience are two assets in offering suggestions for meaningful change and impact, towards both healing our profession, as well as ensuring it remains engaging, safe, and rewarding for both current and future members.

Many of the suggestions received during the facilitated sessions revolved around leadership initiatives (within the judiciary, workplace management teams, law schools, and legal organizations) that are needed to reflect a **culture change** and spotlight that civility and professionalism **matter** in our profession. In addition, increased opportunities to **train, learn, mentor and network** were identified, recognizing the pandemic had specifically impacted this area, both in terms of people's willingness and ability to travel to/from events and in terms of shifting norms (such as “Zoom court” or “webinar learning”). And a third theme revolved around **consequences** of uncivil and unprofessional behaviour – from calling it out (by senior members of the profession, the judiciary, and others) to allowing space for mistakes and growth to actual enforcement of more egregious behaviour.

As an organization, **the TLA is committed** to creating opportunities to continue this reflection and conversation and the Report offers proposed recommendations to assist with upholding civility and professionalism.

Fundamentally, we believe in our profession. We are proud of our profession. And we are committed to moving the dial forward on the issue of civility and professionalism. Please share this Report broadly and continue the conversation.

We welcome input and feedback from the legal community on this Report through info@tlaonline.ca.

Background

Over the course of the Spring of 2023, the **Toronto Lawyers Association (TLA) Membership Committee (MC)** began discussing a theme that seemed to arise frequently in Committee and Association discussions: a sense that post-pandemic, the legal profession was experiencing a decline in civility and professionalism.

Anecdotally, multiple examples of, and reasons for, this decline were offered, with the prominent themes being:

- the lack of in-person engagement and opportunities to connect face-to-face within the profession;
- the apparent lack of mentorship for new members of the profession;
- an increasing lack of trust in our institutions; and
- mental health issues in the profession.

There was a significant interest in the MC to explore this issue further: the then current state of this matter; its impact on both the TLA membership specifically and the broader profession; the opportunity to gain broader perspectives and insights on the reasons for the current state; and input on solutions for improvement. The MC identified a strong desire to “heal the culture of the profession.”

As an organization that frequently demonstrates and pursues opportunities for advocacy and thought leadership in pressing themes within the Toronto legal profession, on **July 28, 2023**, the TLA announced it was undertaking a Project to explore the state of civility and professionalism in our profession. In the announcement, **TLA President, Aitan Lerner** expressed the sentiment of many within the TLA:

It is undisputable that the pandemic and post-pandemic ever changing “normal” have shifted our work and life environments and impacted the way we interact with each other as members of the profession, as well as with clients and other stakeholders in the justice system.

Throughout **the Summer and early Fall, 2023**, the TLA engaged its members and the broader legal community to review the status of the profession, together with exploring gaps and possible solutions for the improvement of civility and professionalism. The Project, to date, included:

- an expansive **literature review**, that informed the subsequent Project components;
- a **comprehensive survey** sent to TLA members and available for response by the broader Toronto legal community;

- a parallel survey sent to members of the **Federation of Ontario Law Associations**, for data on the state of civility and professionalism across the Ontario legal community;
- engaging facilitated discussions with members of the profession, including a broader session with lawyers on **September 21, 2023** and a separate session with the judiciary on **October 3, 2023**, both held at the TLA Offices; and
- this **Report**, which summarizes the findings, offers recommendations, and offers a pathway for next steps for the TLA and the broader legal community.

While we were engaged in the Project, the themes of civility and professionalism emerged through a couple of additional circumstances that we want and need to acknowledge.

First, the decision in *Singh et. al. v Braich*, 2023 ONSC 5053 (CanLii)ⁱⁱ was released in the Fall and became part of a conversation in courtrooms and the legal profession at large. Once again, the question of what constitutes appropriate conduct amongst lawyers, what is appropriate legal strategy and what should happen when one experiences or observes incivility was discussed widely in the profession and on social media. To say that there was complete agreement would be inaccurate; but this case offered an opportunity to consider the values of civility and professionalism.

Second, the TLA undertook to explore the possible impact of the recent pandemic on the profession and had completed its data gathering process by **October 3, 2023**. Following October 3, 2023, the TLA has been engaged in drafting this Report, by reviewing and analyzing the information and feedback received. The TLA, however, acknowledges that as **of October 7, 2023**, another shock was felt by the local bar following the horrific attack by Hamas in Israel, and the ensuing military action in Gaza.

Since the terrorist attack of October 7, in Toronto as throughout the world, law schools, law students, legal employers, legal organizations and lawyers have made public statements, demonstrated, issued open letters seeking signatories, held private conversations and debates, posted on social media and newspapers, all trying to **make sense of the deep fear, hurt and worry** they are experiencing, all while trying to keep up with their personal and professional obligations.

While there has been much disagreement, division and even expressions of hatred currently, there have also been tremendous and inspiring examples of respect, compassion and empathy. Such was demonstrated keenly by the **October 19 joint statement** issued by the University of Ottawa Faculty of Law Muslim and Jewish Law Student Associations, calling on all to focus on "**how our shared pain unifies us, instead of letting hatred divide us**".

The TLA **denounces hate and condemns violence** in all forms, recognizing the devastation and destruction it causes. And as an organization representing lawyers in Toronto, we recognize the responsibility **for maintaining and building respect** for each other and for the rule of law.

Truthfully, we considered whether this was the right time to issue a report about civility and professionalism, **based on concerns that the data perhaps did not truly capture the**

current state of civility and professionalism. Ultimately, we remained steadfast in our agreement that civility and professionalism are at the core of our profession and that the TLA must move forward to share its findings, as it had committed to do in Summer 2023, keenly aware of the depth and degree of pain that many within our profession are currently experiencing; and truly hopeful that part of the goal of this exercise was, as noted above, to **help heal our profession.** After all, we do not know what future shocks there will be – only that there will likely always be shocks of varying degrees and impacts. If our experience in studying this issue in the context of what we set out to do tells us anything, it is that **civility and professionalism are at the core of our profession and the way we engage with one another.** We must do our utmost to uphold these values in perpetuity. The profession depends on it.

At the very heart of this matter is how we, as professionals and humans, respond when issues are fraught with emotion and division. **Respectful and empathetic dialogue** needs to be engaged and modeled now more than ever. And so, we release this Report, recognizing and recommending the need for continued discussion, consideration, and review over the coming months and beyond to continue to uphold and move the dial on civility and professionalism in the legal profession.



Defining Civility and Professionalism:

Let's not allow this challenge to stop the conversation.

Concerns about civility and professionalism in the legal profession are not new; rather, there has been much comment, research and discussion over the years calling for a more “civil” legal profession. While much of the discussion has appeared to focus on barristers, the TLA has taken the approach that the topic is relevant for **all lawyers**, both the litigating bench and bar and transactional lawyers.

The COVID-19 global pandemic, and its aftermath, were catalysts for calls of increased civility and professionalism in the legal profession. The impact felt locally by the situation in the Middle East is another more recent catalyst. What is clear is that there will always be a reason for unprofessional and uncivil behaviour. The TLA's focus within this Report is championing a broader respectful dialogue on civility and professionalism with a goal of improving the collective experience of members, current and future, of the bench and bar.

One of the often-stated reasons some advocates and academics raise against attempts to increase civility and professionalism is the challenge and uncertainty of defining these terms.

In his **2009** article on professionalism as part of the Court of Appeal for Ontario's Goodman Lectureⁱⁱⁱ, Justice Stephen Goudge remarked that:

“...there is still limited consensus on how “civility” should be defined and if it should be regulated by law societies. The definition of civility is fluid and changes based on context and facts. Civility and professionalism are often characterized as personal characteristics and an attitude or approach demonstrated by lawyers when interacting with clients, judges and counsel.”

Justice Goudge went on to remind us that:

“lawyers love, indeed are addicted to, definitions and professionalism is a slippery term. Many alternatives can be conceived.”

After offering some examples, Justice Goudge reminds us:

“...that settling on a ‘right’ answer is not a precondition to advancing the cause. Whether one focuses primarily on the mandatory or regulatory aspects of professionalism or on its aspirational aspects, there is a shared recognition that being a lawyer means something more than having a job, something valuable. It entails duties to others, and ways of acting in one’s professional life.”

And more importantly, he went on to describe why professionalism matters, before looking at changes that might be possible.

Similarly, years later, in **2015**, the Ontario Superior Court of Justice in *Groia*^{iv} offered that any definition of civility would encompass some level of uncertainty, which was accepted by the Supreme Court of Canada^v in its later consideration of the case.

When launching The Advocates’ Society Institute for Civility & Professionalism in **2008**, a follow-up to its **2000** symposium on civility, then-President of the Society, Michael Eizenga defined civility “not just about being polite. At its core, it is about respect – for the system of justice, for the other players in the system, for the other voice in the conflict.” Together with the Institute and further publications of *Principles of Civility and Professionalism for Advocates*^{vi}, (last one in 2020), the Society also launched in 2008 the annual *Catzman Award for Professionalism & Civility*^{vii}. The Ontario Bar Association later created the *Joel Kuchar Award for Civility and Professionalism*^{viii} in 2018, to annually honour a member demonstrating “exemplary commitment to the ideals of civility and professionalism in the practice of law.”

More recently, in his much talked about and impactful **2022** article “The Litigator and Mental Health”^{ix}, then-Chief Justice George Strathy defined and dispelled the efficacy myth of the “gladiator litigator”, calling it out as sending the wrong message to those who practice litigation. Justice Strathy, both in his article and his many talks on the topic since the publication of the article, makes an impassioned and thoughtful plea to leaders across the bar to take critical steps to improve civility, including increased mentorship, patience, manageable workloads and an emphasis on mental health and a recommitment to lifelong learning of professionalism.

And in the **2022** comprehensive and groundbreaking study on the “National Study on the Psychological Health Determinants of Legal Professionals in Canada”^x, principal researcher Nathalie Cadieux, and her team described in great detail the impact that COVID-19, technostress, incivility and many other factors are having on our profession. In the study, the researchers found that 58.7% of legal professionals experienced incivility “sometimes” to “many times” (the “**2022 Canadian National Study**”).

Finally, during our Project, we learned of the **2civility Project in Illinois**^{xi}. Since about **2008**, Illinois established the Illinois Supreme Court Commission on Professionalism to “promote among the lawyers and judges of Illinois principles of integrity, civility and professionalism; to foster commitment to the elimination of bias and divisiveness within the legal and judicial

systems; and to ensure that those systems provide equitable, effective and efficient resolution of problems and disputes for the people of Illinois. (Rule 799(a))". The Commission has conducted surveys of state lawyers in 2007, 2017 and 2021, with published reports specific to these surveys, as well as annual reports between 2008 and 2022. In its 2021 Survey Report^{xii}, it found that 54% of individuals experienced incivility in the past six months, a finding similar to the 2022 Canadian National Study.

For the **Toronto Lawyers Association**, this issue is of significance, and we choose not to shy away from the discussion, and possible solutions, because of the definitional challenge that may be associated with the terms "civility" and "professionalism". In fact, we embrace it, recognizing the duty we have as a professional organization of lawyers to press forward and offer comment, invite reflection, engage in dialogue, and suggest changes that can lead to an improved future for colleagues, current and future.



LSO Rules of Professional Conduct and the FLSC National Requirement

When called to the Bar in Ontario, and in fact, as a licensing candidate prior to being called, members of the profession are expected to know and adhere to the *Rules of Professional Conduct*^{xiii} as they engage with the public, the courts, clients, colleagues and each other. These are duties and standards expected of all members of the profession, with failure to meet them being subject to the LSO's complaints and regulatory processes.

As a reminder, these Rules apply to all lawyers in the profession, **both barristers and solicitors**.

A review of the rules reminds us that language of civility and professionalism are specifically captured in a number of these expectations. Are lawyers held to a higher standard than the general public? Indeed, we are, as part of our professional duties that we accepted upon our call. Refreshers of these Rules, and reflection on how we engage with them and handle challenges is part of our professional obligation.

The LSO's CPD Requirement^{xiv} includes an annual 3 hours of Professionalism, which is on topics of "professional responsibility, ethics and/or practice management", with 1 Professionalism Hour "specifically addressing issues of equality, diversity and inclusion".

Rule No.	Rule
2.1-1	A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity.
2.1-2	A lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals, organizations and institutions.
3.2-1	A lawyer has a duty to provide courteous, thorough and prompt service to clients. The quality of service required of a lawyer is service that is competent, timely, conscientious, diligent, efficient and civil.
5.1-1	When acting as an advocate, a lawyer shall represent the client resolutely and honourably within the limits of the law while treating the tribunal with candour, fairness, courtesy, and respect.

Rule No.	Rule
5.1-5	A lawyer shall be courteous, civil, and act in good faith to the tribunal and with all persons with whom the lawyer has dealings.
5.6-1	A lawyer shall encourage public respect for and try to improve the administration of justice.
7.2-1	A lawyer shall be courteous, civil, and act in good faith with all persons with whom the lawyer has dealings in the course of their practice.
7.2-1.1	A lawyer shall agree to reasonable requests concerning trial dates, adjournments, the waiver of procedural formalities, and similar matters that do not prejudice the rights of the client.
7.2-2	A lawyer shall avoid sharp practice and shall not take advantage of or act without fair warning upon slips, irregularities, or mistakes on the part of other legal practitioners not going to the merits or involving the sacrifice of a client's rights.
7.2-4	A lawyer shall not in the course of professional practice send correspondence or otherwise communicate to a client, another legal practitioner, or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

In addition to the LSO's **Rules of Professional Conduct**, the TLA notes that The Federation of Law Societies of Canada, **National Requirement**^{xv}, requires all Canadian law schools offering the Common Law degree to ensure their Juris Doctor (JD) program covers "Ethics and Professionalism", which includes language about civility (though the focus is on ethical problems in practice). For example, 2.2.1.6. requires all law school graduates to have "demonstrated an awareness and understanding of the ethical dimensions of the practice of law in Canada...which includes...the importance of professionalism, including civility and integrity, in dealing with clients, other counsel, judges, court staff and members of the public".

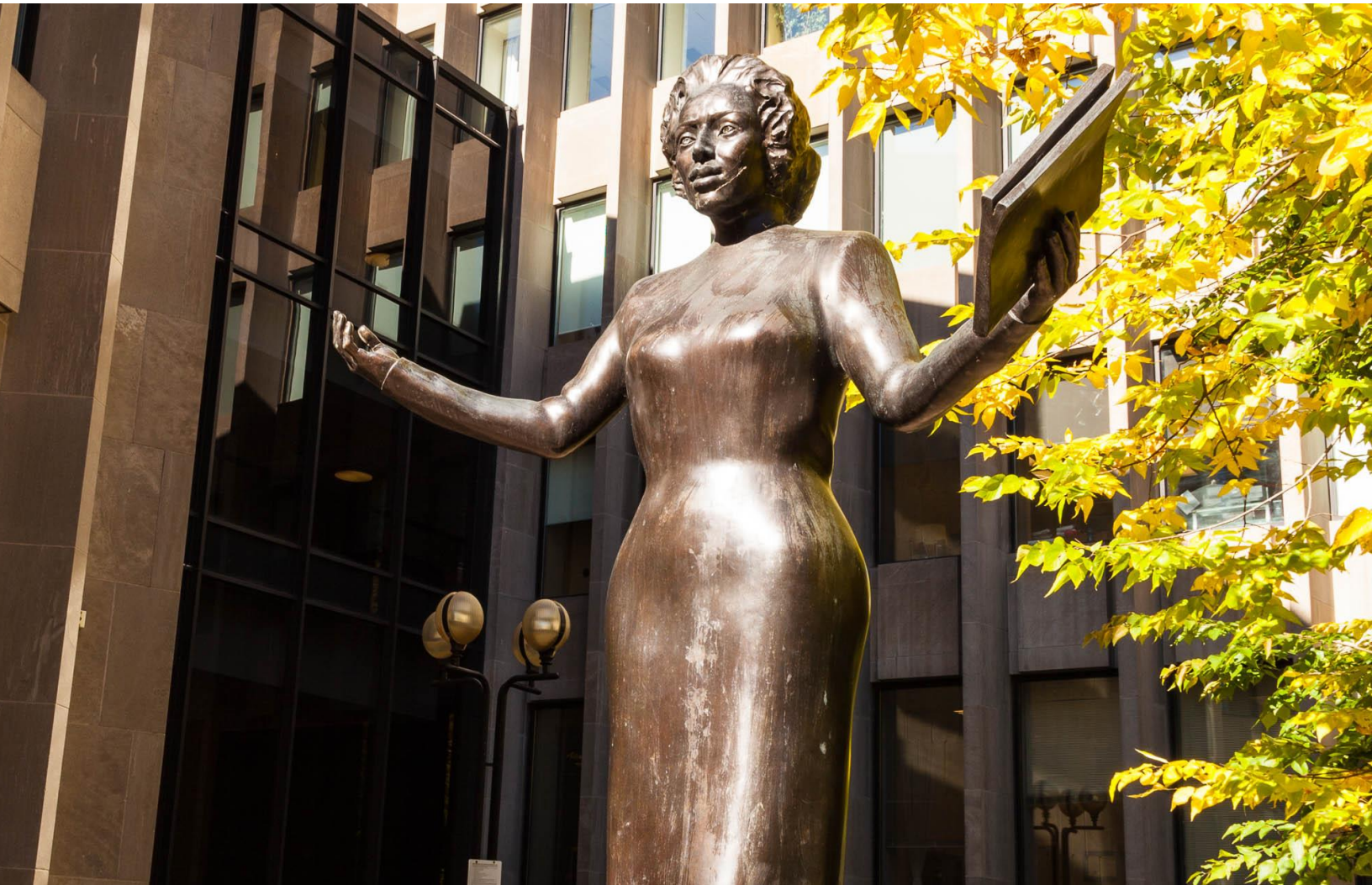
While we did not conduct a thorough examination of law school programs, we acknowledge based on participant feedback that law schools do engage with this requirement in various ways. **Some examples** include an intensive first year course in Ethical Lawyering in a Global Community (Osgoode Hall Law School); mandatory 24 hours of a course of study dedicated to ethics and professionalism (University of Toronto); and a mandatory second year Legal Ethics & Professionalism course (Queen's Law).

In addition, we discovered that Western Law sets the intended tone of its entering class by requiring, as part of the first day of law school, all new students to take a **Professionalism Pledge at an annual Induction Ceremony**. This process is referenced in all Admissions materials, on the law school's website and in the offers of admission to each admitted student.

The first day ceremony includes an inspiring keynote speaker, and the affirmation by each new student of their commitment to professionalism by reciting and signing the **Western Law** Professionalism Pledge:

I accept the privilege and responsibility of becoming a law student at Western University. I support an environment conducive to the intellectual and personal growth of all who study, work and live here.

I pledge, to the best of my ability and judgment, to conduct myself with honesty, integrity and civility. I will strive to use my education and leadership ability to serve the public good and I will hold myself to the high standards that are expected of persons who will one day enter the legal profession.



Methodology:

Feedback by the profession

1. Survey

One of the pathways for additional community information that had been identified by the TLA MC was a survey.

The intention of the survey was both to obtain information about perceptions of the theme, experiences of incivility and unprofessionalism, possible factors contributing to the current state, as well as suggestions for action. In addition, it was important for the TLA to obtain responses from a diverse range of members, recognizing everyone's experience is different. And therefore, a section was included seeking additional anonymous information about respondents.

The TLA sent out a comprehensive survey to its membership on **August 25, 2023**, and posted it on various social media channels for broader circulation, with a deadline of **September 15, 2023**. The survey was separately distributed to FOLA members, for an opportunity for input by lawyers outside of Toronto. A total of **332 responses** were received.

a. Information about the Respondents

The intent of the TLA survey was to capture input from a broad and diverse set of members of the profession. Below are some statistics about our survey respondents. Two additional open-ended questions were asked about both race/ethnicity and religion/creed, with various responses given.

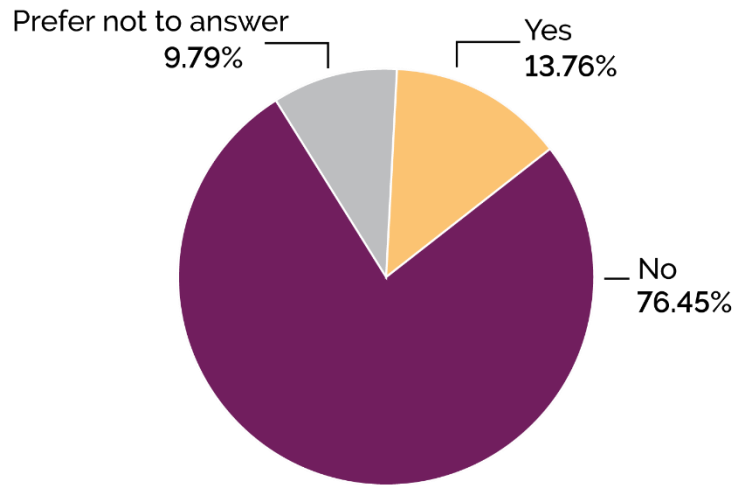
Of the 332 respondents:

- 40.98% identified as male; 48.32% identified as female; 0.61% identified as non-binary; 0.31% identified as two-spirit
- 39.76% are married or cohabiting, with dependants; 25.99% married or cohabiting, without dependants; 14.98% single, without dependants; 3.67%, divorced/separated, without dependants; and 3.36% divorced/separated, with dependants
- 78.31% received their law degree in Ontario; 12.65% in Canada, outside Ontario; and 7.53% internationally
- The majority of respondents were called to the Bar between: 1990-2000 (22.63%); 2012-2017 (20.49%); 2018-2023 (17.74%); 2001-2011 (17.13%) and 1979-1989 (14.68%)
- The majority of respondents' primary area of current practice is in Family/Matrimonial Law (21.71%); Civil Litigation – Defendant (21.41%); and Civil Litigation – Plaintiff (14.68%)

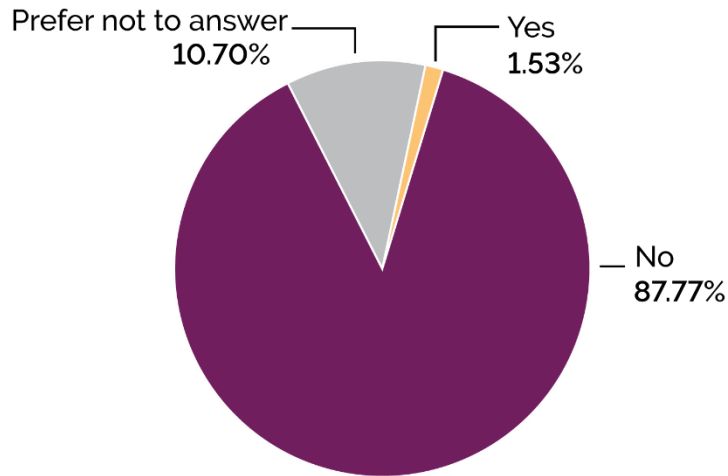
- The majority of respondents described their practice setting as small firm, 2-5 lawyers (26.61%); sole practice (23.85%); mid-sized firm, 6-50 lawyers (19.57%); and large firm, 51+ lawyers (15.90%)

Additional information about the respondents:

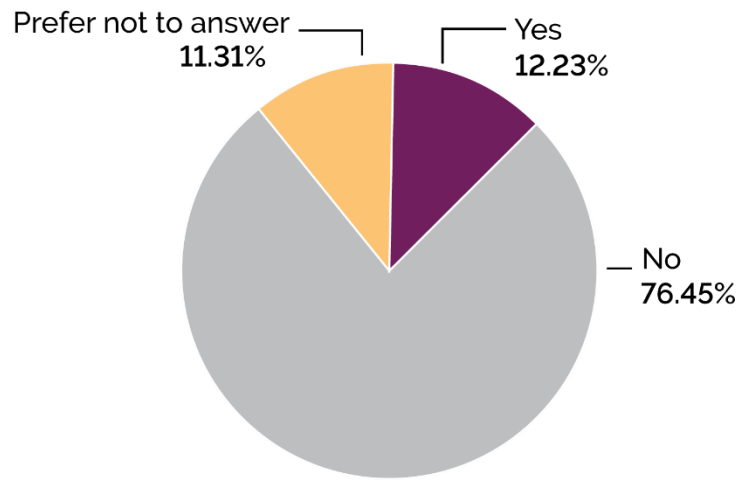
Q13: Do you identify as a racialized person?



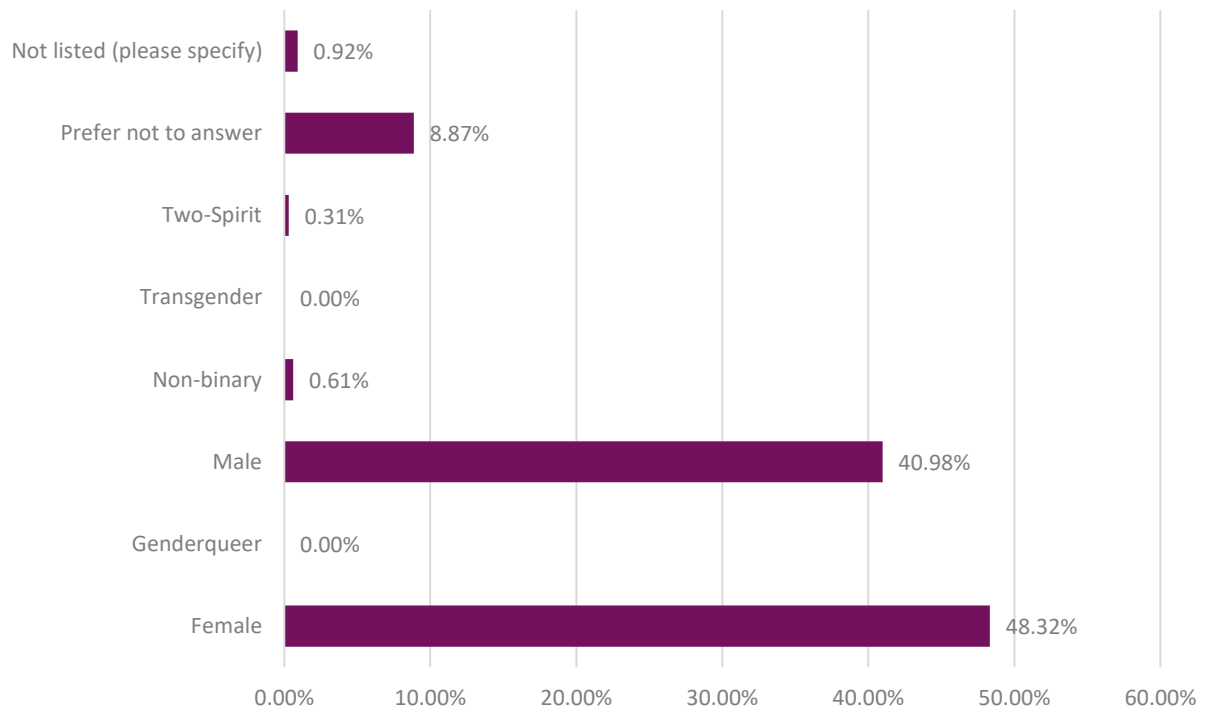
Q15: Are you Indigenous?



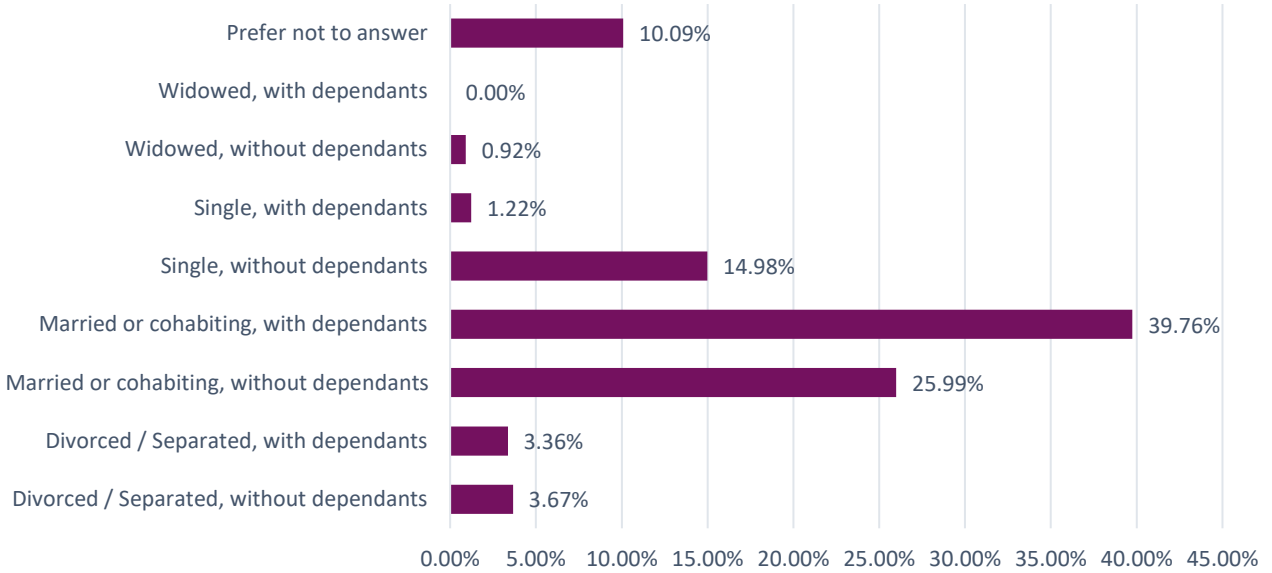
Q. 18: Are you a person with disability?



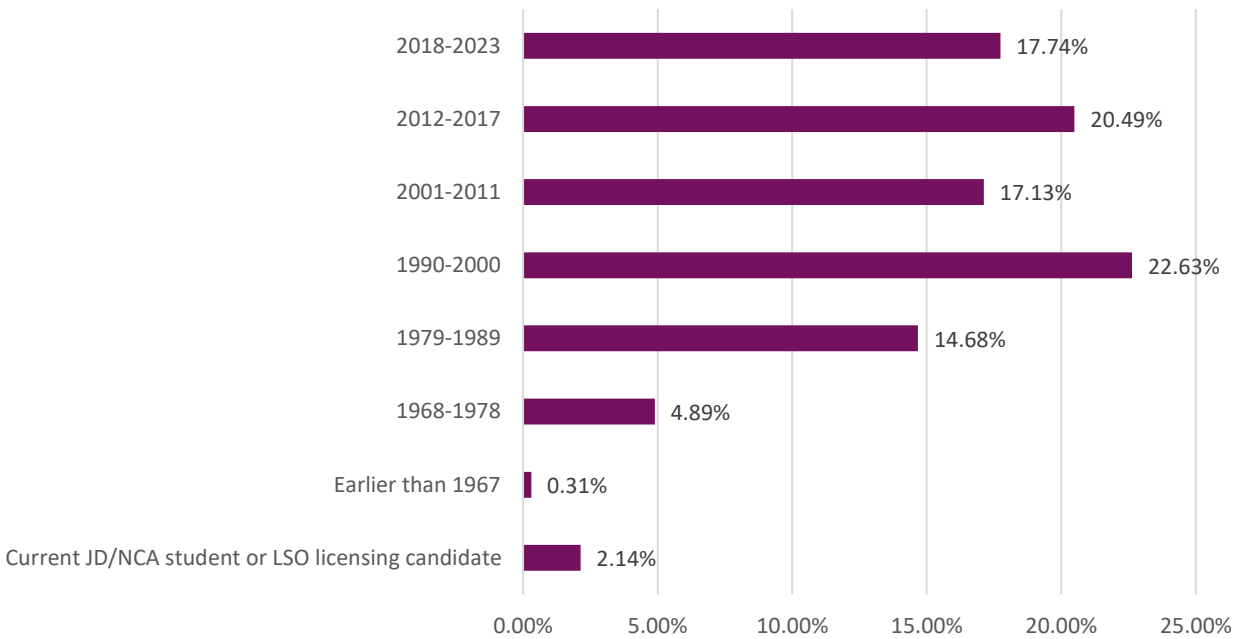
Q19: To which gender identity do you most identify?



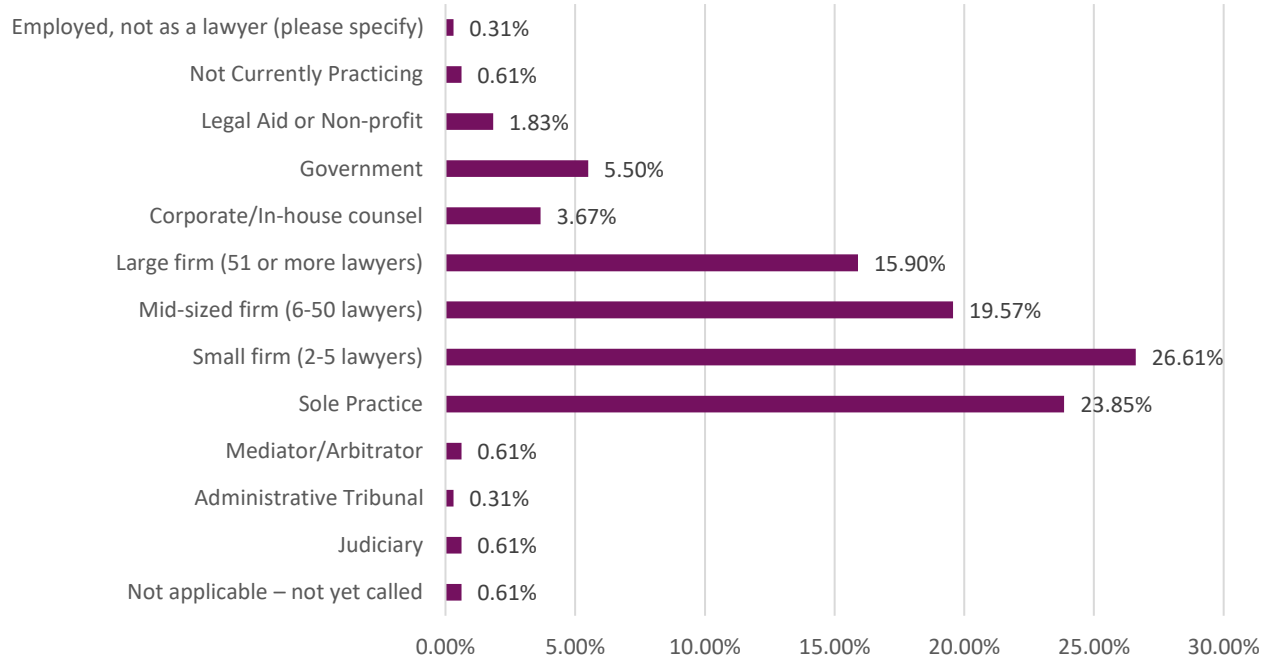
Q21: Marital Status?



Q22: Year of Call to the Ontario Bar?



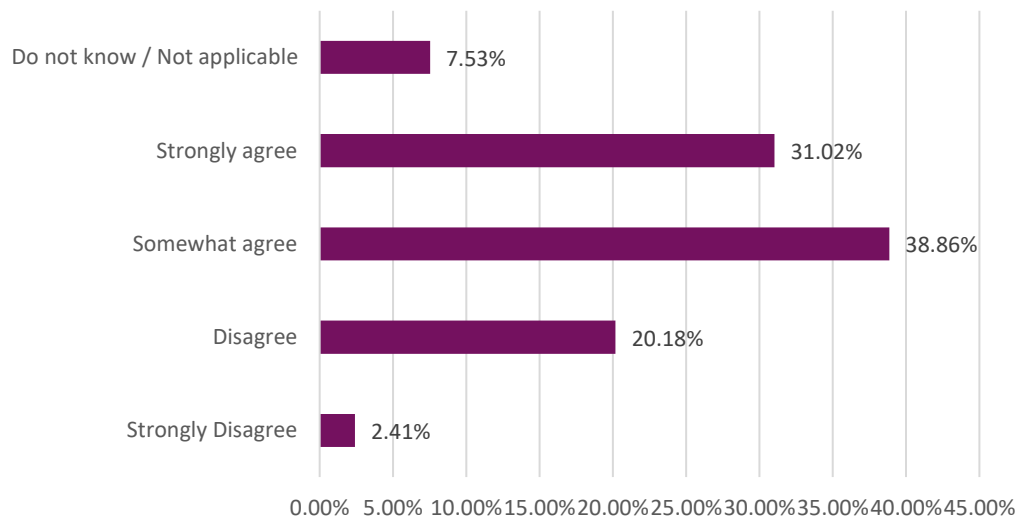
Q25: Practice Setting?



b. Initial Questions – Perceptions and Experiences

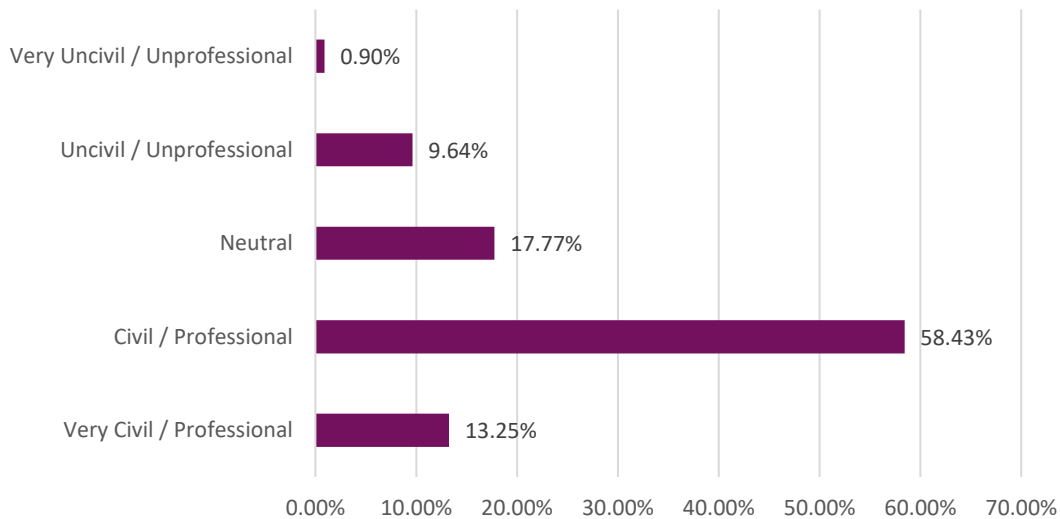
The very first question intentionally explored respondents' perceptions, asking whether they felt "that civility and professionalism in the legal profession amongst colleagues has declined", with 69.88% of respondents answering they "somewhat agreed" or "strongly agreed".

Q1: I feel that civility and professionalism in the legal profession amongst colleagues has declined:



Interestingly, when asked to describe “most lawyers” they engage with, 71.68% of respondents said their colleagues were “very civil/professional” or “civil/professional”, with 10.54% describing them as “uncivil/unprofessional” or “very uncivil or unprofessional”.

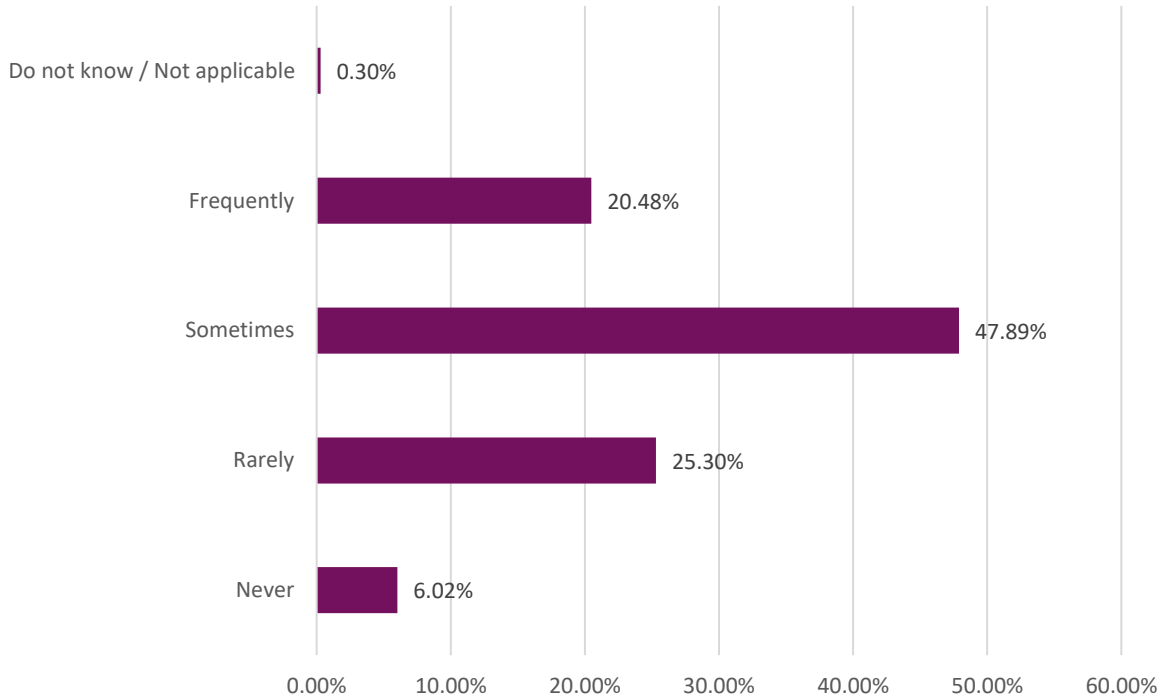
Q2: Most lawyers I engage with are:



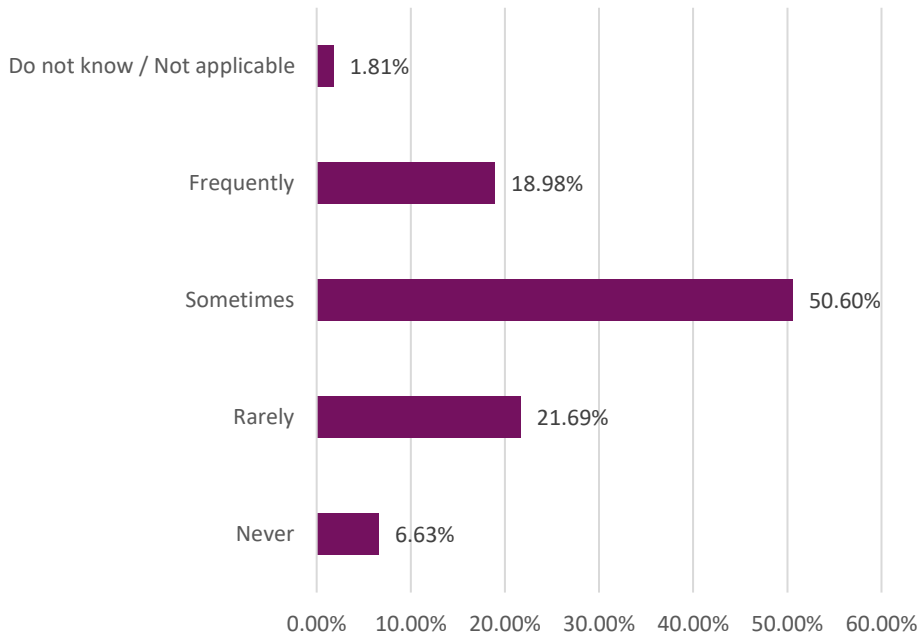
This made us wonder whether there was a discrepancy, but many suggestions came through during the later facilitated discussion, including that while each of us may see ourselves and our peer group as upholding a particular standard of conduct, we still observe and/or experience the impact of the behaviour of and by others.

In fact, according to respondents, up to the date of the Survey in September of 2023, well over half of the respondents (68.37%) indicated that in this past year (2023), they “sometimes” or “frequently” **directly experienced** uncivil or unprofessional behaviour from another lawyer; and 69.58% indicated that in the same time period (i.e., 2023), they **personally witnessed** uncivil or unprofessional behaviour by another lawyer, student, team member, court staff, judge, arbitrator, mediator, client or member of the public. This response reflects the anecdotal concerns received by the TLA from its members as to a rise in uncivil and unprofessional conduct as amongst members of the bar. We have included these additional results below:

Q3: In 2023, how often have you directly experienced uncivil or unprofessional behaviour from another lawyer?

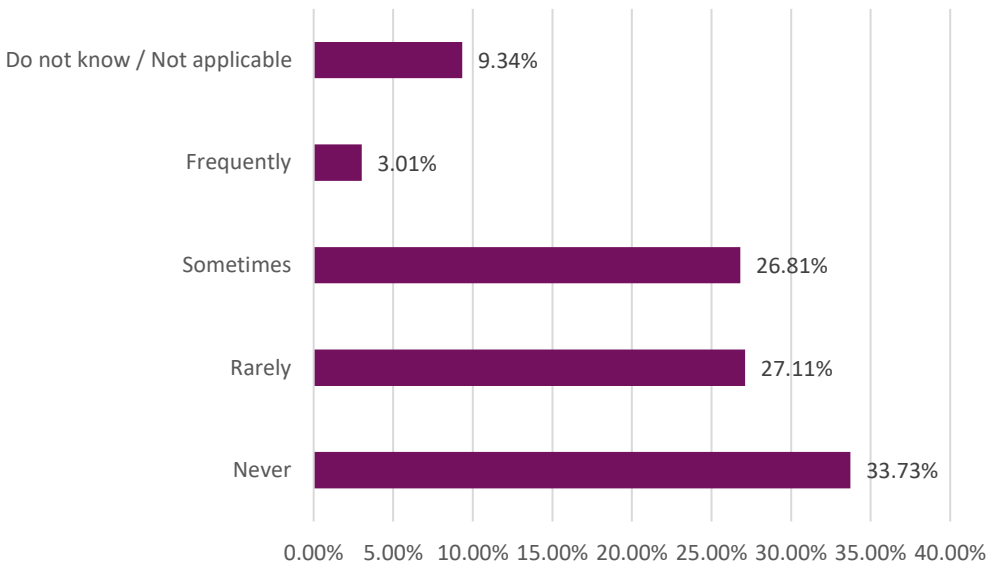


Q5: In 2023, how often have you personally witnessed uncivil or unprofessional behaviour by another lawyer, student, team member, court staff, judge, arbitrator, mediator, client, or member of the public?

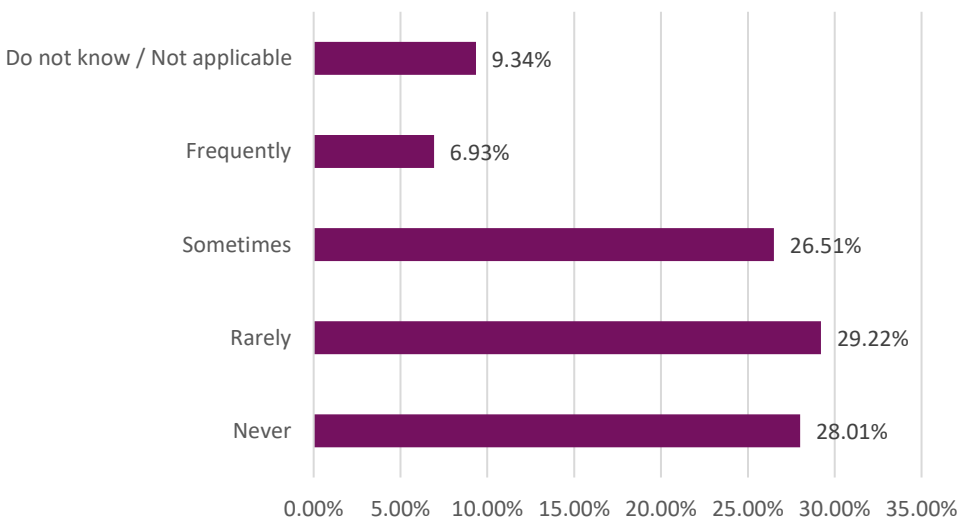


While colleagues may be misbehaving, a comforting result from the survey was that 60.84% of respondents indicated they had “never” or “rarely” **directly experienced** uncivil or unprofessional behaviour from a decision maker and 57.23% “never” or “rarely” **personally witnessed** such behaviour by a decision maker.

Q4: In 2023, how often have you directly experienced uncivil or unprofessional behaviour from a judge, arbitrator, mediator, or other decision maker?



Q6: In 2023, how often have you personally witnessed uncivil or unprofessional behaviour by a judge, arbitrator, mediator, or other decision maker towards another lawyer, student, team member, court staff, judge, arbitrator, mediator, client, or member of.



c. Examples of conduct considered unprofessional or uncivil and current responses

When creating the survey, the TLA explored whether to leave the question of specific behaviour or conduct that would be considered “unprofessional” or “uncivil” open-ended, or to offer specific examples. This was a heavily debated topic as there was a broad appreciation that different behaviours are both experienced and perceived quite differently by individuals, depending on their context and circumstances.

In the end, it was agreed to offer a list to respondents of what the MC has experienced and perceives as “uncivil or unprofessional behaviour” and seek information about the frequency of such direct experiences. The top six most **frequent** behaviours are noted below:

Top three “frequent” behaviours:

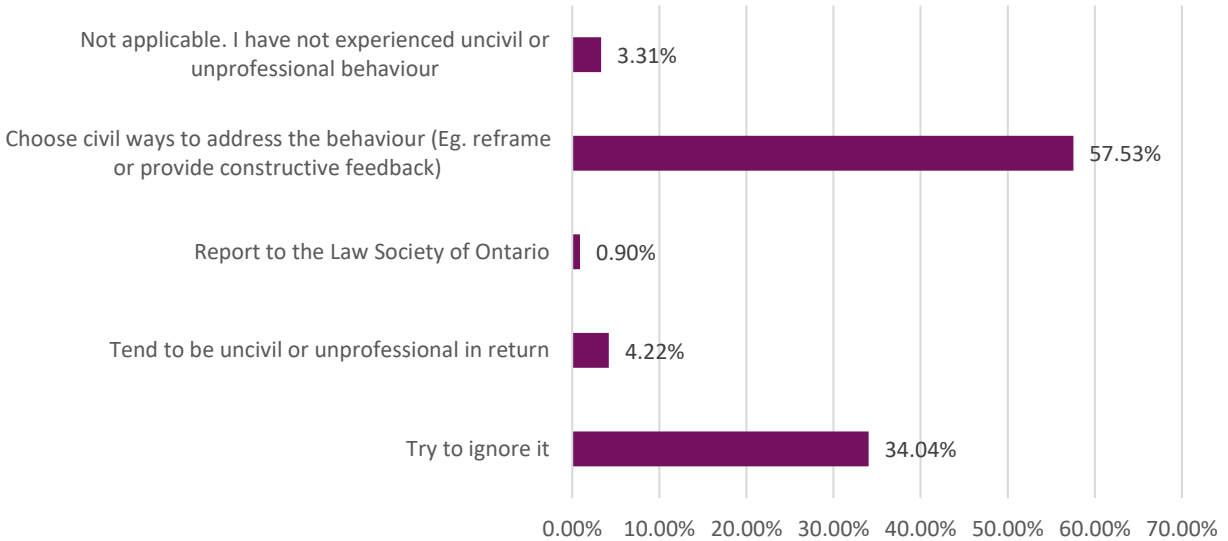
"Not receiving responses at all to correspondence (emails, texts, phone messages or regular mail)"	31.33%
"Excessive rigidity of positioning in a negotiation"	30.42%
"Innapropriate interruption of others"	28.92%

Next three “frequent” behaviours:

"Sarcasm or condescending attitude"	24.1%
"Negotiating in bad faith or stretching facts"	19.88%
"Receiving aggressive, inflammatory or rude texts or emails"	19.58%

There were a broad variety of experiences referenced, and one respondent indicated that “it’s no worse now than it has ever been.” This was a matter we wanted to explore further, as we do later in the Report.

When asked about respondents' current responses to uncivil or unprofessional behaviour towards them directly, 57.53% respondents indicated they would “choose civil ways to address the behaviour, e.g. Reframe or provide constructive feedback”. However, 34.04% responded that they would “try to ignore it”.



d. Reflections on the reasons for uncivil or unprofessional behaviour

As indicated previously, from anecdotal reporting received by members of the bar, there had been a sense among the TLA that matters were worse post-pandemic and we wanted to explore the reasons for what members of the profession were witnessing and experiencing.

When offered a list of factors that may be contributing to uncivil or unprofessional behaviour in the legal profession, the following were the top **"very relevant"** reasons.

"Lack of training or mentorship"	43.98%
"Impacts of technology (always being "on" and "available")"	29.22%
"Overwork/workload"	27.71%
"Raised client expectations"	26.81%

e. Exploring consequences of uncivil or unprofessional behaviour

As a profession, there are broad reasons why unprofessional and uncivil behaviour is troubling. For the purposes of the survey, we restricted consideration to seven consequences. Full results are in the chart, below, with the top three responses for **"strongly agree"** being **increased difficulty to resolve a matter; making the practice of law less satisfying; and increased litigation or transaction costs.**

In the comments that accompanied the survey, lawyers referenced “increased mental health harms”, “burnout”, “mental health crisis in the profession”, “stress was making me sick”, as well as resulting decisions to leave the practice all together. Given recent increased awareness on mental health in the legal profession, these responses reaffirm the experiences of respondent lawyers.

Beyond these responses, however, the survey also indicated that incivility and unprofessionalism additionally:

- Prolongs discovery and/or negotiation (68.37% “strongly agree”)
- Harms public/client confidence in the justice system (56.93% “strongly agree”)
- Contributes to the challenge of retention of lawyers in the practice of law (55.12% “strongly agree”)
- Discourages diversity in the profession (37.05% “strongly agree”)

Retention of lawyers, particularly those from traditionally marginalized communities, is closely related to this issue and a factor the profession must address. While numerous EDI initiatives are available in the profession, the impact has yet to be accomplished if people are continuing to exit.

Recognizing the potential impact (both positive and negative) that workplace environment and culture have on individual experiences and perceptions on civility and professionalism, the TLA survey asked about respondents’ firm or organizational culture. Below are the top 3 impacts with which respondents “**strongly agree**”:

"Cultivates a culture where people of all backgrounds are welcomed and valued"	43.67%
"Does not tolerate inappropriate jokes on race, ethnicity, gender, sexual orientation or disabilities"	43.07%
"Offers opportunities for mentorship and training"	40.06%

f. Suggestions for improving civility and professionalism

Rather than offer options to be ranked or considered, the TLA decided to leave this question as open-ended for broader input, and nearly 40% of respondents **offered specific suggestions and comments**. While a very few respondents suggested either that there really is no problem in the profession, or that some people are “just born” that way and cannot change, there were also many themes that arose multiple times, including;

- Training and Mentorship: increased awareness, training and education around diversity, treatment of juniors, professional decorum, civility, for both new lawyers and more senior members of the profession

- Controlling the Realities of the Business of Law: changes to the business of law, including alternatives to the billable hour and implementing minimum rates for lawyers and block fee policies
- Focus on Consequences of Uncivil and Unprofessional Behaviour: greater involvement by the Law Society of Ontario (in both training, often requesting it be mandatory, reporting, enforcement and sanctions)
- Greater Engagement: greater engagement and support from the Bench in directly and openly addressing incivility and unprofessional behaviour, imposing cost sanctions, as well as leading round tables on civility
- Return to in-person for more activities and events

g. Additional Survey comments

The survey offered respondents the opportunity to add additional comments. While gratitude for engaging in the conversation, and pleas to "do something about this" and "keep trying to solve this problem", were expressed several times in the survey, additional themes or comments arose.

Below are some direct respondent final quotes, many captured in the themes noted above, for a greater sense of lawyers' experience with this topic.

"The **lack of civility** increases the **stress** of my position significantly for me. It certainly makes me **think twice** about continuing in litigation."

"Racialized lawyers experience thousands of **microaggressions** that aren't captured in surveys like this on a **DAILY** basis. On one of the questions you asked how we respond and one option was "try to ignore it". That doesn't capture the **power dynamic** of when we resort to that, such as when the conduct is from an adjudicator or other person with significant power to wield over you or your client."

I have enjoyed being a lawyer for many years(44). I know the good old days were not "good old days", at least for me and others like me. Things are better today, on most fronts. The primary dislocation relates to Covid, the economy, under resourced justice system, and much uncertainty within the courts and the profession about core values and practices...It seems like head butting views are more welcome than patience, kindness and collaboration. It would greatly help lawyers if there were fewer changes in practice rules both LSO and Lawpro plus via our courts. Much credit does have to be given to Ontario's judges though for handling Covid as well as they did. Catching up on caseloads is going to be a daunting task."

"I feel that overall there has been a general decline in civility and to be honest, I too have been guilty of such behaviour. I feel that lawyers are sharper with one another and often attempt to impose deadlines that can't be met without moving heaven and earth. I feel that as lawyers we have an obligation to our clients and in general to model civil behaviour and give particular points in disclosure the time frame applicable."

"I think this issue is in part generational, and more mentorship, training and public discussion of the principles of civility would be welcome. I think there is a role for the judiciary and other decision makers as well, as in my experience they often turn a blind eye to such conduct, which implicitly condones it."

"I hate the culture of '**gotcha**.' 'Gotcha' is not vigorously advocating for a client. Nor is it courteous towards other members of the bar."



2. Facilitated Sessions

As part of this important Project, in addition to community outreach through a survey, the TLA decided it was important to bring people in-person together to discuss this topic. It was important to hear from members of the profession at all stages, and across all practice areas, and we specifically sought out students, new lawyers, more senior lawyers; litigators, transactional lawyers, in-house counsel, private practice lawyers across firm sizes and government lawyers; lawyers from diverse backgrounds and experiences; mediators and other non-practicing lawyers actively involved in harassment and mental health issues in the law.

We were grateful to gather with members of the profession on **September 21, 2023**, where we provided an initial presentation with some relevant background information.

In smaller groups, the participants were then asked to consider each of the following two themes, and report back to the larger group, for what became a very lively and engaged conversation:

- Observations and Experiences – the What and Why?
 - The What: Reported observations and experiences with uncivil and unprofessional conduct
 - The Why: Attempt to explain reported observations and experiences
- Possible Solutions - Let's get creative!

In addition, the TLA held a facilitated session with members of the judiciary on **October 3, 2023**, for their input on the same questions.

While there was much conversation and exchange in both sessions, below are the most recurring themes and comments that arose, frequently mirroring those offered through the survey, as well as in some of the earlier literature we discussed (e.g., Justice Goudge's 2009 article, Chief Justice Strathy's 2022 paper and the 2022 Canadian National Study).

 <h2>What?</h2>	 <h2>Why?</h2>	 <h2>Solutions?</h2>
<ul style="list-style-type: none"> • inappropriate comments • "fronting" for clients • aggressive or polarized communications (in all forms) • intimidating or sarcastic behaviour • lack of preparation or knowledge 	<ul style="list-style-type: none"> • regional or geographic differences among practice bars • business and competition • increasing billable hour targets • less mentorship or training • adversarial system, itself • technology and social media • shifts in culture and global changes in standards and expectations of behaviour • mental health factors (profession and clients) • fewer opportunities for interpersonal interactions; loss of "3rd spaces" 	<ul style="list-style-type: none"> • workplace leaders to move to culture change • message that it matters in all areas of workplace (job postings, descriptions, performance reviews, training) • broadcast shadowing learning opportunities across workplaces and profession • in-court and Zoom court observational opportunities • LSO Civility CPD • practice specific options (e.g., tape civil discoveries and 360 review at end of trials) • cooling down periods • call out bad behaviour and enforce consequences • offer more in-person engagement, including bench and bar and across jurisdictions • engage law schools for a conference

Recommendations

The issue of civility and professionalism in our legal profession is critical for us all, both individually and collectively, for our professional and personal wellbeing. Considering our obligations and duties as lawyers, this issue is also critical for the clients we serve and the public we engage with daily.

When we undertook this Project, the anecdotal reports led us to the hypothesis that civility and professionalism have declined since the pandemic. While we were unable to prove this hypothesis empirically, the qualitative feedback received, certainly affirmed the reported decline.

Of course, some elements of the issue pre-date the pandemic, and others have been impacted by that and other global changes. **Whether incivility is empirically greater or less than before the pandemic or just...different...ultimately does not matter.** What does matter is the strong sense that **the situation is "bad enough"**.

While it may well be a challenge to define exactly what "civility and professionalism" are, the TLA recognizes and acknowledges that there is work to be done. The pleas of survey respondents; the conversations we are having in our workplaces, courtroom, meeting rooms, classrooms, Zoom rooms and boardrooms; the themes of our facilitated discussions; and our individual experiences all make it clear that more needs to be done.

As one member of the September 21, 2023 facilitation indicated, we "**need leaders for culture change**" in our profession and the TLA is prepared to take on this role.

One participant in our fall meeting offered a wonderful structure for thinking about our recommendations, which we offer to others to work through these issues:

- Set the Expectations
- Encourage the "Good"
- Correct the "Bad" (finding a balance between making mistakes and learning)

As an organization and as individual members, the TLA values the thoughtful suggestions that were offered throughout the various outreach opportunities of this Project. As a group, the TLA is committed to engaging in the following in the coming months and years.

a. Shorter-Term Recommendations (within 2024)

1. Upon release of this Report, invite **external organizations**, including but not limited to the following, to meet with the TLA leadership and discuss our findings to continue the conversation and identify solutions:
 - Members of the Judiciary
 - Law Society of Ontario
 - LawPro

- Managing Partners of Toronto law firms
 - Faculty and Decanal representatives from Toronto (or Ontario) law schools
 - Legal Aid Ontario
 - The National Self-Represented Litigants Project
2. Recognizing we must look internally as well as externally, and set the tone we are expecting from others, create a **Civility and Professionalism Sub-Committee**, to review our processes and opportunities for continuing to engage in this topic, including:
- Adding a standing Agenda Item on civility and professionalism to our monthly board meetings as a check-in and follow-up of our internal team.
 - Include a Civility and Professionalism area on our TLA Website, to include this Report and subsequent programming and events.
 - Participate in a Board training workshop on themes raised within this Report.
 - Collect and spotlight "good behaviour" stories in our weekly member newsletter.
 - Review the creation of a process and platform to facilitate broadcasting members shadowing opportunities for students and juniors.
 - Explore our training and events programming offerings, both in terms of content and fee structure, to enable additional accessible civility and professionalism in-person training and community development across the bench and bar, across practice areas.

b. Longer-Term Recommendations

1. Commit to conducting annual follow-up surveys to assess and report on changes to the status of Civility and Professionalism in the Toronto legal profession. We believe of the importance of continuing to measure the state of civility and professionalism as a necessary component of upholding these values in our profession.
2. Report back to the broader TLA community on the efforts undertaken with the above shorter-term recommendations and the potential continuation of some of these elements.
3. Facilitate the ongoing collection of resources and opportunities regarding Civility and Professionalism.

Conclusion

We wish to thank all the members of the **TLA Membership Committee** who engaged so very diligently and enthusiastically in this Project:

- Edona Vila (Chair and Director, TLA Board)
- Zoe Aranha
- Peter Hamiwka
- Conner Harris (Director, TLA Board)
- Tonia Jiao
- Matthew Karabus (Director, TLA Board)
- Ilya Kirtsman
- Josh Koziembrocki (Director, TLA Board)
- Chad Leddy
- Teri Liu
- Areta Lloyd
- Albana Musta
- Michelle Rawana

For their support of this Project, we are also grateful to our **TLA Staff**:

- Joan Rataic-Lang
- Stephanie Lang
- Megan McDonnell
- Claire Murray
- Sandra Porter

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We thank our **Consultant, Gina Alexandris**, for her involvement and guidance throughout this Project.

And finally, we are truly grateful to **all TLA members and members of the broader legal community**, who contributed to our review with their candid input and feedback about their observations and experiences on civility and professionalism in the legal profession.

Endnotes

ⁱ "Israel-Hamas conflict sowing strife in profession with accusations of McCarthyism and antisemitism", Aidan Macnab, *Law Times*, 15 Nov 2023

ⁱⁱ Singh et. al. v Braich, 2023 ONSC 5053 (CanLII), <<https://canlii.ca/t/koofg>>, retrieved on 2023-11-21

ⁱⁱⁱ Looking Back and Looking Forward on Learning in Professionalism, Justice Stephen Goudge, February 20, 2009, Source: Court of Appeal for Ontario, the Goodman Lecture. Available at: https://www.ontariocourts.ca/coa/about-the-court/archives/looking_back/

^{iv} Groia v. Law Society of Upper Canada, (2015), 330 O.A.C. 202 (DC);2015 ONSC 686. Available at <https://ca.vlex.com/vid/groia-v-lsuc-679409385>

^v Groia v. Law Society of Upper Canada, 2018 SCC 27, [2018] 1 S.C.R. 772. Available at: <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/17113/index.do>

^{vi} The Advocates' Society Principles of Civility and Professionalism for Advocates, February 20, 2023. Available at: https://www.advocates.ca/Upload/Files/PDF/Advocacy/InstituteForCivilityandProfessionalism/Principles_of_Civility_and_Professionalism_for_AdvocatesFeb28.pdf

^{vii} The Advocates Society Catzman Award for Professionalism and Civility. Information available at: https://www.advocates.ca/TAS/Community_Events/Award_Pages/The_Catzman_Award_for_Professionalism_and_Civility.aspx#:~:text=About%20the%20Award%3A&text=Generosity%20of%20time%20and%20expertise,member%20of%20The%20Advocates'%20Society

^{viii} OBA Joel Kuchar Award for Civility and Professionalism. Information available at: <https://www.oba.org/About-US/About-Us/Awards/Association-Awards/Joel-Kuchar-Award-for-Professionalism-and-Civility>

^{ix} "The Litigator and Mental Health", George R. Strathy, Chief Justice of Ontario, 2022. Available at: https://www.ontariocourts.ca/coa/about-the-court/publications-speeches/the-litigator-and-mental-health/#_ftn1

^x Cadieux, N., Cadieux, J., Gouin, M.-M., Fournier, P.-L., Caya, O., Gingues, M., Pomerleau, M.-L., Morin, E., Camille, A. B., Gahunzire, J. (2022). Research report (preliminary version): Towards a Healthy and Sustainable Practice of Law in Canada. National Study on the Psychological Health Determinants of Legal Professionals in Canada, Phase I (2020-2022). Université de Sherbrooke, Business School. 379 pages. National Study on the Psychological Health Determinants of Legal Professionals in Canada", 2022. Available at: https://flsc.ca/wp-content/uploads/2022/10/EN_Preliminary-report_Cadieux-et-al_Universite-de-Sherbrooke_FINAL.pdf

^{xi} Illinois' 2civility™ Commission: <https://www.2civility.org/about/>

^{xii} 2civility™ Surveys and Annual Reports: <https://www.2civility.org/about/reports/>. As we drafted our Survey, we adopted questions or themes from the Illinois Survey, specifically TLA Survey questions 2, 3, 7, 8, 10, 11, 12, 14, 19, 22, 24, 25 and 26, which we reference and/or discuss in this Report.

^{xiii} Law Society of Ontario, Rules of Professional Conduct: <https://lso.ca/getdoc/b3d6e382-c555-41ab-9534-054e7254d74e/rules-of-professional-conduct>

^{xiv} Law Society of Ontario, Continuing Professional Development Requirement: <https://lso.ca/lawyers/enhancing-competence/continuing-professional-development-requirement>

^{xv} Federation of Law Societies, National Requirement, January 1, 2018: <https://flsc.ca/wp-content/uploads/2018/01/National-Requirement-Jan-2018-FIN.pdf>