

# **NOTEBOOK ON ETHICS, LEGAL ISSUES AND STANDARDS FOR COUNSELLORS & PSYCHOTHERAPISTS**

**"...NAMES WILL NEVER HURT YOU..."  
A DECISION FROM THE SUPREME COURT  
OF CANADA**

BY DR. GLENN SHEPPARD



**W**hen I was growing up, I sometimes heard my parents and others say, "Sticks and stones may break your bones but words will never hurt you."

Maybe this was said to help us as children deal with the emotional sting of being called a bad name. Of course, such parental reassurance is mostly ineffective because being called a name can hurt and when it is nasty and persistent, it can be a form of bullying or even harassment.

What happens when professional practitioners engage in name calling each other? Can such behaviours even be viewed as professional misconduct; and if so, can it ever warrant an ethical sanction? Well, we do have an answer from the case *Doré v. Barreau* that went all the way to the Supreme Court of Canada (SCC).

Mr. Doré, a lawyer, represented a client before Judge Boilard of the Superior Court of Québec. The Judge criticized him while he was making his arguments in Court. Also, when he later delivered his written reason for rejection of Mr. Doré's application on behalf of his client, he expressed additional criticism of the lawyer. The Judge accused Mr. Doré of:

*"...bombastic rhetoric and hyperbole" and said that the court must "put aside" Mr. Doré's "impudence." Justice Boilard characterized Mr. Doré's request for a stay as "totally ridiculous" and one of his arguments as "idle quibbling." Finally, he said [Mr. Doré] "fixated on or obsessed with his narrow vision of reality which is not consistent with the facts, Mr. Doré has done nothing to help his client discharge his burden."*

Mr. Doré later complained about Judge Boilard's conduct to the Canadian Judicial Council. After its review of his complaint, it issued a reprimand to Judge Boilard. This decision was apparently informed, in part, by evidence from another occasion when he made a personal attack on another lawyer. The Council Panel stated:

*The panel finds that the impatience you showed and the immoderate comments you made to an officer of the court, Mr. Doré, are unacceptable and merit an expression of the panel's disapproval under subsection 55(2) of the Canadian Judicial Council By-Laws.*

However, before lodging his complaint to the council, and immediately following his appearance before the Judge, Mr. Doré wrote a private letter to him in which he expressed the following criticisms:

*The judge was called "loathsome", "arrogant" and "fundamentally unjust" and was accused by Mr. Doré of "hiding behind [his] status like a coward"; having a "chronic inability to master any social skills"; being "pedantic, aggressive and petty in [his] daily life"; having "obliterated any humanity from [his] judicial position"; having "non-existent listening skills"; having a "propensity to use [his] court—where [he] lacks the courage to hear opinions contrary to [his] own—to launch ugly, vulgar, and mean personal attacks", which "not only confirms that [he is] as loathsome as suspected, but also casts shame on [him] as a judge"; and being "[un]able to face [his] detractors without hiding behind [his] judicial position."*

ALTHOUGH THIS CASE  
WAS ABOUT THE  
CONDUCT OF A LAWYER,  
THE CENTRAL ISSUE [...]  
CAN APPLY TO MANY  
PROFESSIONS INCLUDING  
COUNSELLING AND  
PSYCHOTHERAPY

Based on this letter, a complaint against Mr. Doré was made to the Barreau du Québec, the body responsible for the regulation of the profession of lawyers in Québec. Its Disciplinary Council found him to be in violation of the **Code of Ethics** for lawyers, which states that the conduct of lawyers "must bear the stamp of objectivity, moderation and dignity." It rejected Mr. Doré's argument that the finding was an unreasonable limitation on his freedom of expression and suspended him from practicing law for 21 days.

Mr. Doré appealed the decision against him and the associated sanctions to the *Québec Tribunal des Professionals*. It rejected his appeal, and a subsequent appeal to the Québec Court of Appeal was

also dismissed. He then appealed to the Supreme Court of Canada (SCC).

In its consideration of the appeal, the SCC stated that the decision to suspend Mr. Doré for 21 days was not before Court. Rather, it had to decide whether or not the Disciplinary Council's decision to discipline him represented an appropriate balance of his right to freedom of expression under the *Charter of Rights and Freedom* and the statutory responsibility of the Barreau du Québec to ensure that lawyers behave with "objectivity, moderation and dignity" consistent with Article 203 of their **Code of Ethics**. The Court decided that, in this case, there was an appropriate balance struck between these competing interests and determined that, therefore, the decision was a reasonable one.

"HIS DISPLEASURE WITH  
JUSTICE BOILARD  
WAS JUSTIFIABLE, BUT  
THE EXTENT OF THE  
RESPONSE WAS NOT."

have a duty to do so. But, they are constrained by their profession to do so with dignified restraint.

A reprimand for a lawyer does not automatically flow from criticizing a judge or the judicial system. As discussed, such criticism, even when it is expressed robustly, can be constructive. However, in the context of disciplinary hearings, such criticism will be measured against the public's reasonable expectations of a lawyer's professionalism. As the Disciplinary Council found, Mr. Doré's letter was outside those expectations. His displeasure with Justice Boilard was justifiable, but the extent of the response was not.

In its decision, the SCC once again (see Fall Notebook) gave deference to administrative law and to the authority it grants to regulatory bodies to judge the conduct of its members. In this instance, it also accepted the Disciplinary Council's exercise of its discretion with respect to the lawyer's right to free expression under the *Charter of Rights and Freedoms*. It also gave primacy to the principle of reasonableness in rendering its decision.

For more information on the SCC case, please refer to [The Canadian Legal Information Institute \(CanLII\)](#).

On a personal note, I could not resist sharing this more balanced version of the consequences of name calling:

Sticks and stones may break my bones,  
but words can also hurt me.  
Sticks and stones break only skin,  
while words are ghosts that haunt me.

Pain from words has left its scar,  
on mind and heart that's tender.  
Cuts and bruises now have healed,  
it's words that I remember.

Although this case was about the conduct of a lawyer, the central issue of balancing the competing rights of freedom of expression and the ethical obligation to adhere to a professional code of conduct can apply to many professions, including counselling and psychotherapy. For this reason, observations from the SCC decision are included here:

*Lawyers potentially face criticisms and pressures on a daily basis. They are expected by the public, on whose behalf they serve, to endure them with civility and dignity. This is not always easy where the lawyer feels he or she has been unfairly provoked, as in this case. But, it is precisely when a lawyer's equilibrium is unduly tested that he or she is particularly called upon to behave with transcended civility. On the other hand, lawyers should not be expected to behave like verbal eunuchs. They not only have a right to speak their minds freely, they arguably*