

KEEPING CURRENT

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Maintaining your reputation in the practice of law (*Modabber v. Kermanshahani*)

By Stephen Thiele

Founded in the 1920s, Gardiner Roberts LLP has grown to become a strategically placed mid-sized business law firm with a diverse client base which includes several of Canada's largest banks, public companies including mining, high tech and software companies, real estate enterprises, lenders and investors.

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A good reputation is critical to most professions, especially the legal profession. The law of defamation, which we have written a lot about, is solely designed to protect a person's reputation and to award damages for the loss of reputation. However, we can all fall victim to harming our own reputation in the practice of law by taking positions or advancing matters before the court that are meritless or questionable.

While in law school, the young, fledging lawyer-to-be learns, among other things, foundational substantive legal principles or practical advocacy skills, there are few courses that dive into legal ethics, civility, how to professionally deal with other members of the profession or how to protect your own reputation before the courts if you choose to be a courtroom lawyer. A reputation can be lost in a courtroom in a blink of an eye. Judges remember lawyers who conduct themselves badly before them, and, as I was once told by a very senior, highly regarded, retired appellate court judge, like everyone else, judges can be prone to

gossip among their colleagues about the lawyers who have appeared before them.

[*Modabber v. Kermanshahani, 2024 ONSC 186*](#) stands as a lesson to all lawyers in regard to managing legal issues and approaching them with reason. The costs of legal services can be unaffordable to many people as seen through a growing number of litigants who are self-represented (or perhaps, a better word, unrepresented) before our courts. For various reasons, our civil and criminal justice systems are experiencing lengthy delays. There are a backlog of cases throughout our civil justice system and therefore lawyers, in handling a file and representing a client, should not necessarily make the backlog worse.

In [*Modabber*](#), the parties had scheduled a hearing date for February 14, 2024 to deal with issues in a family law dispute, including the distribution of the net proceeds of sale of their matrimonial home. However, before the hearing date, the parties were involved in negotiating the release of funds from the net proceeds of the sale of their matrimonial home and other relief regarding

reimbursement of costs for renovations to the home that helped it to sell.

The parties had agreed that each would receive \$75,000 from the net proceeds of sale and that the husband would reimburse the wife 50% of the costs of the renovation up to \$7,500, plus 5% interest on the amount to be reimbursed. The agreement was without prejudice to each party's position regarding the distribution of the proceeds of sale of the home.

After this deal was made, a lawyer for the husband requested documentary proof for the source of the money as there was a concern that the cost of the renovations came from a joint business account the parties had held. However, the need for documentary proof of the costs of the renovation were not part of the agreement.

In response to the request, the wife's lawyer sought \$9,332.39, representing 50% of the actual expenses incurred for renovations to the home, notwithstanding the agreement that the reimbursement would be capped at \$7,500. This prompted the husband's lawyer to offer to pay \$7,050 which represented the portion of the expenses that were proved with documentary evidence and proof of payment.

The wife then served a Form 14B motion under the [Family Law Rules, Rule 14](#) of the [Family Law Rules](#) allows a party to bring a motion for temporary orders, directions or a change in a temporary order.

The husband's lawyer proposed that funds from the sale of the home be released as agreed upon and that the wife's application be withdrawn. However, the wife's lawyer rejected this offer on the grounds that the wife was entitled to costs of the 14B motion.

At issue then before the court was a mere \$450 difference of opinion, while ample funds remained in trust following the disbursement of the agreed-upon \$75,000, and the parties had another pending court appearance in a few weeks.

While the motion judge ordered the release of \$75,000 to each party from the net proceeds of sale of the home and a further \$7,500 to the wife as reimbursement for the renovations, no costs were ordered.

The motion judge was clearly annoyed by the conduct of the lawyers stating:

I am tempted to release this decision to Legal Research for the amusement of lawyers throughout Canada. I would do so but there is nothing funny about this case.

The motion judge further noted that the case could serve as an education for the profession, especially the family law bar. Under [rule 2\(4\)](#) of the [Family Law Rules](#), the motion judge noted that parties and their lawyers are required to help the court to promote the primary objective of the rules. The primary objective of the rules is to enable the court to deal with cases justly by, among other things:

- ensuring that the procedure is fair to all parties;
- saving expense and time;
- dealing with the case in ways that are appropriate to its importance and complexity; and
- giving appropriate court resources to the case while taking account of the need to give resources to other cases.

The motion judge recommended that the lawyers provide their respective clients with rule 2 of the [Family Law Rules](#) and ordered the lawyers to share the ruling with their clients. The lawyers were to assure the judge presiding over the February 14, 2024 hearing that they had done so.

Although not expressly stated, the decision demonstrates that the lawyers acting for the



parties had likely impaired their respective reputations before the motion judge, who provided the following nugget of advice to all lawyers:

Lawyers should appreciate that it takes years to earn a solid reputation but mere moments to destroy it. That also refers to the reputation amongst the local Bar as well as the Bench.

The key takeaway from this decision is that lawyers sometimes need to step back from the battle involving their clients. Although it is important for a lawyer to remember that they advocate on behalf of their client and can do so zealously, there are also points in time when reason and common sense must prevail. Lawyers are not only advocates for their clients, but they are also officers of the court. And in family law in Ontario, a lawyer also has added duties and responsibilities codified under [rule 2](#) of the [Family Law Rules](#).

In my view, practitioners in all areas of the law should take the [Modabber](#) decision and the overriding public policy reflected in [rule 2](#) to heart when representing a client who becomes entangled in a legal dispute. By doing so, a lawyer will hopefully be allowed to walk away from the practice of law with a good reputation intact.

Contact us

If you have a litigation matter and are in need of legal advice, please do not hesitate to contact **Stephen Thiele** at 416.865.6651 or by email at sthiele@grllp.com

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