

**IN THE MATTER OF *THE LEGAL PROFESSION ACT***

**AND**

**IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF MICHAEL TERRIGNO,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**JURISDICTION AND PRELIMINARY MATTERS:**

[1] On June 8<sup>th</sup> and 9<sup>th</sup>, 2009 a hearing committee of the Law Society of Alberta convened at the offices of the Law Society offices in Calgary to inquire into the conduct of the Member, Michael Terrigno. The Committee was composed of Anthony G. Young, Bencher (Chair), Vivian Stevenson Q.C., Bencher and Wayne Jacques, Lay Bencher. Michael Penny represented the Law Society of Alberta and James Rooney Q.C. represented the Member.

[2] Exhibits 1-4 consisting of the following:

1. Letter of Appointment of the Hearing Committee;
2. Notice to Solicitor;
3. Notice to Attend; and
4. Certificate of Status of the Member,

established the jurisdiction of the Hearing Committee.

[3] The Letter dated June 4, 2009 from R. Gregory Busch, Director of Conduct with respect to individuals receiving a Private Hearing Application Notice (required by Rule 96(2)(a) was marked as Exhibit 5. The entire hearing was held in public.

[4] There was no objection by any of the parties with respect to the constitution of the Hearing Panel.

**BACKGROUND:**

[5] The Member was, at all materials times, a student at law, employed by Gabor Zinner of Zinner Law Offices in Calgary, Alberta.

[6] The Complainant is the estranged wife of a relative, A.B.

[7] The first complaint arises out of the way that the Member conveyed himself in Court. The complaint arose from the Member's appearance in Court before the Honourable Mr. Justice Sulatycky of March 6, 2007 and March 9, 2007. On the second occasion the Member was asked to leave the Courtroom subsequent to the Court commenting on his "antics".

[8] The second complaint arose from an incident that took place on the following day, March 10, 2009 at the Matrimonial Home of A.B. and the Complainant.

[9] The third complaint is with respect to the Member's communication with the Women's Shelter.

[10] The fourth complaint about the Member's conduct concerns the failure of the Member to provide the Complainant with her corporate minute book and file.

[11] The final complaint arises generally with respect to the Member's behaviour throughout his dealings with the Complainant.

## **CITATIONS:**

1. It is alleged that (the Member) acted inappropriately in court, and that such conduct is deserving of sanction.
2. It is alleged that (the Member), on March 10, 2007, represented to a Calgary City Police officer that (he was) a lawyer, and that such conduct is deserving of sanction.
3. It is alleged that (the Member) attempted to contact the Complainant at the Woman's Emergency Shelter, and that such conduct is deserving of sanction.
4. It is alleged that (the Member) failed to provide the Complainant with her corporate minute book and file, or prevented the Complainant from obtaining her corporate minute book and file, and that such conduct is conduct deserving of sanction.
5. It is alleged that (the Member) acted in a matter when (his) objectivity to do so was impaired to the extent that (he was) unable to properly and competently carry out the representation, and that such conduct was conduct deserving of sanction.

## **EVIDENCE:**

### **Acting inappropriately in Court**

#### *Application March 6, 2007*

[12] The Member appeared on behalf of A.B., before the Honourable Justice Sulatycky on March 6, 2007. Ms. B.J. Widdowson Q.C. represented the Complainant. This was an application brought by the Member on behalf of A.B. to prevent the Complainant from removing the child of the marriage from the Province of Alberta and the Calgary area pending an order for custody, access and contact.

[13] During the application on March 6, 2007, the Member made the following representation to the Court: “what’s occurring is there is a quasi abduction matter at the moment.” In fact, the Complainant left the matrimonial home and went to the Woman’s Shelter because she feared of her safety and the safety of the child. The Member used the following words to describe the Complainant’s behavior:

“acting erratically”;  
“very unusual”; and  
“completely perplexes everyone”.

*The transcript from March 6, 2007:*

[14] The Member continually interrupted counsel for the Complainant resulting in the following admonishment by the Court at page 5 lines 4 through 13:

THE COURT: You are a student at law?  
MR. TERRIGNO: Yes, I am sir.  
THE COURT: All right.  
MR. TERRIGNO: If I may just correct her.  
THE COURT: You are sir. You should let opposing counsel finish before you interrupt. All right. You're - - if you continue behaving that way, you are at risk of never being admitted to the bar, sir. As a student at law, you should know that you understand proper courtroom behavior. All right? ...

and at page 6 lines 15 through 26

MR. TERRIGNO: If I may sir, I just wanted to apologize to my friend here for the interruption.  
THE COURT: Yes. You should - - I mean you are behaving like unrepresented parties often do. But as counsel it is proper courtesy is to allow each count - - or your opposing - - your friend to complete their submissions before any interruptions. All right so ...  
MR. TERRIGNO: If I can say something?  
THE COURT: Let that be a lesson then, so.  
MR. TERRIGNO: Thank you.  
THE COURT: Good.

*The testimony of the Member:*

[15] The Member confirmed that with the permission of Mr. Zinner and the approval of A.B., the client, he went to Chambers to seek a restraining order against the Complainant to prevent her from leaving the jurisdiction with the child of the marriage. This order was granted. At this hearing, the Member admits to interrupting the Complainant’s lawyer, but states that he apologized to the Court for his behavior.

Application of March 9, 2007

*The testimony of the Complainant:*

[16] This incident occurred during another appearance before the Honourable Justice Sulatycky on March 9, 2007. An application made by counsel for the Complainant for exclusive possession of a matrimonial property and a restraining order against the Complainant's husband. The Member was asked to leave the courtroom after conducting himself in an inappropriate manner while the Complainant's lawyer was addressing the court.

[17] Justice Sulatycky also ordered that the Complainant could pick up her things from the Matrimonial Home.

*The Transcript:*

[18] The following is an exchange during a Court application made by Gabor Zinner on March 9, 2007 with the Member in attendance at page 18 of the transcript of the hearing:

THE COURT: ... not convenient to the child. You are talking about the best - - quit your antics. I had cause to admonish your student earlier this week. I do not recall exactly what it was but he was - - interrupted opposing counsel inappropriately and you have to spend some time with Mr. Terrigno, to teach him about proper court room behavior, including gestures such as he just made. That is not appropriate for counsel. All right?

MR. ZINNER: Thank you, My Lord.

THE COURT: And students are here at the will of the Court. I would ask that you ask your student to leave.

MR. ZINNER: Thank you, Sir.

THE COURT: All right.

MR. ZINNER: Now, I should indicate that - -

THE COURT: Yes. Please leave the courtroom.

MR. ZINNER; I should indicate, sir, that Mr. Terrigno's principle is (INDISCERNIBLE) but nonetheless this is a direction of the Court - -

THE COURT: Yes.

MR. ZINNER; - - and it will be respected.

MR. TERRIGNO: Okay. Well, I apologize if I've offended the Court.

THE COURT: All right. Is your client here?

*The testimony of the Member:*

[19] The Member confirms that he did roll his eyes in court and was asked to leave the courtroom by the Honourable Justice Sulatycky. This occurred while counsel for the Complainant was advising the Court of what she believed her client deserved in child

support payments. The Member did not agree with counsel's suggestion. The Member stated that he apologized to the Court for his behavior.

[20] The Member offered the explanation that his behaviour in Court was due to his lack of experience, as he was in his third month of articling at the time of the incident. He states that nothing like that has ever happened again.

### **Representations to Calgary Police that he was a lawyer**

#### *The testimony of the Complainant:*

[21] On or about March 9, 2007, the Complainant's lawyer notified the Member to tell him that the Complainant would be attending at the Matrimonial Home on or about March 10, 2007, to collect her personal belongings, pursuant to the court order granted on March 9, 2007. The Member wrote a letter to the Complainant's lawyer on March 9, 2007 indicating that there were no personal items of the Complainant's at the Matrimonial Home; they had all been removed from the property. As such, there was no reason for the Complainant to visit the property. The Complainant was given this letter on or about March 9, 2007.

[22] Notwithstanding receiving the letter the Complainant attended at the property in order to collect any of her remaining items and items for her son. Her father, her sister, a friend, a locksmith and Constable Brady of the Calgary Police Department accompanied the Complainant when she attended the home. Constable Brady informed A.B.'s mother, who was in the home, that the Complainant was there to collect her belongings and the belongings of her son. Shortly after entering the home, the Member and A.B.'s father, entered the home. The Member was very angry and commenced yelling at both the Complainant and Constable Brady. The Member repeatedly shouted the phrases "you're not allowed to be here", "You don't have the paperwork," "You have to leave," "I'm a lawyer and you have to get out of here." The confrontation between Constable Brady, the Member and A.B.'s father continued as the Complainant collected her and her son's belongings from the home. The confrontation escalated to a point where Constable Brady called for additional help with the situation. At no time did the member advise the Constable that he was in fact a student-at-law and not a lawyer.

#### *The Testimony of Constable Brady:*

[23] Constable Brady confirmed that he attended the Matrimonial Home on March 10, 2007 with the Complainant. He was presented an Emergency Protection Order ("EPO") upon arrival and two phone numbers to contact the Complainant's Husband. He tried both phone numbers, but was unable to reach him. When calling the second phone number, A.B.'s mother answered. Her English was not very good, so she allowed the officer to speak to A.B.'s father. A.B.'s father agreed to be in attendance at the home in order to make sure his son's belongings were not harmed.

[24] The Constable described the arrival of the Member as follows:

“(the Member) showed up and at the onset he was very abusive, very confrontational, both towards me and (the Complainant)and the others that were there to help her with her move. Things got so heated that I had to contact my sergeant to have him attend the residence just to keep things from escalating, as I feared that they would.”

[25] The Constable recalls a phone call to the family lawyer, Mr. Gabor Zinner, about the situation. The Constable spoke to Mr. Zinner, who confirmed that it was all right for the Complainant to get her belongings from the home. The Constable then spoke to Mr. McCann, a lawyer from Ms. Widdowson’s office, who told the Constable that the EPO had been changed to a restraining order and that the first part of that order was for the Complainant to be able to get her belongings from the home. Mr. Zinner agreed with this as well.

[26] After the Complainant was in the home collecting her belongings and the belongings of her child, the Member arrived. The Constable recalls that the Member arrived very upset and confrontational. The Member claimed he was a lawyer, A.B.’s lawyer and that he had documentation that the Complainant did not have any right to be at the home. It was at this point that the Constable called for an additional police presence. The Member continued to be confrontational and abusive throughout the whole process, and at one point the Member had to be restrained by A.B.’s father, who subsequently removed the Member from the home.

[27] The Member returned shortly with the letter he had sent on March 9, 2007. The Constable acknowledged that the member signed it, “Student: Mike Terrigno”. At the time of the incident, the Constable was under the impression that the Member was a lawyer.

[28] During the conversations between the Member and the Sergeant, the Constable does recall the Member identifying himself as a lawyer and not a student.

*The testimony of A.B.’s father:*

[29] A.B.’s father, states that he was contacted by police on March 10, 2007 to come to the Matrimonial Home to open the door in order to let his daughter-in-law, the Complainant, take her things. When he arrived at the home, the front gate lock was broken and open. He stated that the police officer was unsure as to why the front gate was open. The Complainant was already in the home when A.B.’s father arrived.

[30] A.B.’s father testified that he removed all the personal belongings of the Complainant and moved them to his house on March 9, 2007. There was to be a showing of the Matrimonial Home on March 10, 2007. A.B.’s father stated that the Complainant was free to pick up her things from his home at any time. He states that this fact had been communicated to the Complainant’s father.

[31] At 11:00 or 11:15 a.m., a potential buyer for the Matrimonial Home showed up to the house stating that she was meeting the real estate agent there. At this time the Member and the real estate agent arrived upon the scene.

[32] The Complainant had taken all the items from the child's room, including furniture and drapes. The Member told A.B.'s father that the Complainant was not allowed to do this.

[33] A.B.'s father stated that he:

“never heard the Member state that he was a lawyer to the police officer. In fact, he stated that he heard the Complainant say “the student at law is here ... the student”.”

“did not feel that the Member was being confrontational.”

*The testimony of B C:*

[34] Mr. C is a realtor that had been engaged by the Member's family to list and sell the Matrimonial Home. He states that he had an appointment with a prospective purchaser at 11:00 a.m. on March 10, 2007 to view the Matrimonial home. He testified that he was a little late due to traffic. When Mr. C arrived at the home he observed a couple of police vehicles in front of the home. He states that he had asked the Member to meet him at the home to let him in.

[35] Mr. C saw the Complainant moving items out of the home. He stated that the Member was concerned about what she was taking. Mr. C testified that he thought he heard the Complainant taunt the Member with the phrase “student-at-law, student-at-law.”

*The Testimony of the Member:*

[36] The Member confirms he was in attendance at the property on March 10, 2007. He states that he was there because the real estate agent, B C, could not get a hold of anyone else to let him on to the property in order to show it to prospective buyers.

[37] The Member states that the letter he wrote to the Complainant's lawyer on March 9, 2007 was based upon information that he received from A.B.'s father with respect to the Complainant's belongings in the home. The Member states that A.B.'s father told him that all the Complainant's belongings had been removed from the home as the house was being shown. The Member spoke to Mr. Zinner about the situation and states that Mr. Zinner instructed him to send a letter to the Complainant's lawyer stating that the Complainant's belongings were no longer at the home and thus there was no point in the Complainant coming to the house. Furthermore, the letter was to say that the Complainant's belongings could be picked up or delivered, whichever was easier.

[38] The Member arrived at the home by himself. He was unaware that the Complainant would be there. The Member states that the real estate agent and potential buyer arrived at the same time at the home. Upon arrival, the Member states that he saw a number of people “ransacking” the home. He also states that he saw two police officers. He then introduced himself to Constable Brady, at which point, he testified that the Complainant started yelling “Oh, the student at law is here. The student at law is here.”

[39] Contrary to the testimony of Constable Brady, the Member states that he entered into a discussion with Constable Brady as to the situation. The Member states that the difference in classification of the conversation between him and Constable Brady is a matter of opinion. The Member states that A.B.’s father, was under the impression that the Constable and the Complainant would wait for him to arrive prior to entering the property. This was not done, as the lock was broken at the front gate. Furthermore, the Member states that the Complainant was taking many things, including furnishings, fixtures and things that did not belong to her. As such, the Member states that he questioned what the Constable was doing. Furthermore, the Member states that he was trying to explain to the Constable that the EPO had been varied by the March 9, 2007 order and that the Complainant had tried to use the EPO in other circumstances. The Member states that he left the property to go and get the letter dated March 9, 2007 in order to show the Constable what he was referring to. The Member states that A.B.’s father never physically removed him from the premises.

[40] The Member testified that he does not remember stating at any time that he was a lawyer.

*Testimony of the Member under cross-examination:*

[41] The Member, when questioned about the “ransacking” of the home, admitted that the Complainant had every right to be there to collect her personal items.

[42] The Member started laughing when he was asked by Law Society Counsel why he got involved in the situation with respect to the letter written to the complainant’s lawyer, bringing the real estate agent over to the home and confronting Constable Brady. He then apologized for laughing, and then proceeded to state that the only reason he was at the home was because he had been contacted by the real estate agent asking him to let him into the home.

**Minute Books and Financial Records**

*The testimony of the Complainant:*

[43] During the marriage between the Complainant and A.B., a company known as C P I, was incorporated. The Complainant was the only shareholder. C P I was used to import wines and distribute them in Calgary. It is the Complainant’s testimony that she was a “front” and that A.B. was the one actually running the business. The Member did some work for C P I through his consulting company, MT C I. As such, the Member had



possession of the C P I's financial books. After the Complainant and A.B. separated, the Complainant, through her lawyer, requested the financial books from a bookkeeper by the name of S P. S informed the Complainant that she did not have the books and that the Member was in possession of the books.

[44] Upon cross-examination the Complainant wavered in her belief as to who actually had the financial books of C P I. In her Affidavit, sworn November 17, 2008, she states that she would like the financial records of C P I back and that the Member, A.B. or anyone else could be in possession of them. It was the Complainant's position that she included all the names in her affidavit to prevent any transfer of the books to other family members or the bookkeeper, thus preventing her from obtaining the documents she required.

*The testimony of the Member:*

[45] It is the witness' testimony that he only had access to the books at the time of incorporation or shortly after the company was incorporated (while the books were in the possession of his bookkeeper S P). When the Complainant requested the books back, the Member states that he asked S to put all the documents for C P I in a box. He went through the box prior to giving it back and noted that the minute book and other accounting documents for the company were in the box. The Member testified that he dropped off the box of documents to the property that A.B. and the Complainant lived at and gave the box to A.B. He testified that he has not seen the documents since.

*The testimony of the Member under Cross-examination:*

[46] The Member admitted that the Complainant was searching for the minute books for both C P I and another corporation, R M. He denies that the Complainant's had a right to examine the minute book for R M. After being asked if the Complainant was a director of R M, the Member answered in the affirmative, then proceeded to admit that the Complainant would have been able to view the documents while she was a director.

[47] When asked about the minute book for C P I and whether the Complainant was looking for it, the member answered in the affirmative and stated that he had given the books to the Complainant. Counsel for the Law Society corrected the Member and stated that he had not given the books to the Complainant but rather given them to A.B.

[48] When asked if the Member had ever followed up with A.B. to see if the books had been given to the Complainant, the Member responded in the negative, adding "You know, sir, there are a number of things that she has done during these proceedings in order to build a case, and unfortunately her actions have caused more misfortune for her than any benefit."

[49] Upon further examination by the panel it was determined that the documents were returned to the Complainant's husband sometime in January 2007.

*The testimony of A.B.:*

[50] A.B. testified that the Complainant incorporated C P I. He states that there were many purposes of the company but in the end the Complainant decided to import wine and he had no involvement in the company.

[51] A.B. confirmed that the Member had dropped the books off to him to give to the Complainant around mid-January 2007. He states that he gave the books to the Complainant that evening.

[52] A.B. states that he does not have possession of the documents now.

*The testimony of S P:*

[53] S P states that she completed work for C P I and was instructed by both the Complainant and the Member. It was her understanding that the Complainant's role in the company was to oversee everything. (The Complainant had signing authority and gave final approval.)

[54] S P states that the Member did some work for the company – consultation with respect to taxes, financial docs, etc

[56] S P testified that the last time she saw the books for C P I was January 2007. She remembers being asked by the Complainant for the books of the company in late February 2007.

**Phone call to the Women's Shelter:**

*The testimony of the Complainant:*

[57] This incident occurred while the Complainant was staying at the women's shelter in late February 2007. A few counselors at the women's shelter had answered phone calls from individuals looking for the Complainant. The first person to call identified himself as the Member and said he worked for a law firm, however, when asked which law firm, the Member hung up the phone. There were three additional phone calls made by A.B.'s mother. According to the counselors at the women's shelter, both sets of phone calls were of concern because the callers were very demanding and very abrupt.

*The testimony of the Member:*

[58] The Member testifies that he called the shelter on instruction from A.B., and after speaking to Gabor Zinner. His evidence is that the family was concerned about the child of the marriage's whereabouts. The Member insists he did not call to speak directly to the Complainant. When calling the shelter, the Member noted that he stated he worked at the law firm that was representing him. He testified that he was calling the Shelter to find out if the child was okay and if he was there with the Complainant.

[59] The Member states that Mr. Zinner decided that an application be made to restrict the Complainant from leaving the city with the child of the marriage.

*The testimony of the Member under cross-examination:*

[60] When asked why he contacted the shelter, the Member repeated that it was to find out where the child was. When asked why he did not contact the Complainant's lawyer, the Member gave a similar answer and stated further that the Complainant and the child of the marriage were not necessarily in the same place.

[61] Law Society Counsel inquired whether the Member knew what the women's shelter was for and if he knew that it was a safe place for women and children to go if they are in fear of their safety. The Member answered: "So -- okay. Isn't that obvious?"

*The testimony of A.B.:*

[62] A.B. testified that he found out that the Complainant and his son were staying at the women's shelter so he contacted them. The shelter would not give him any information, the shelter said they needed a lawyer to call. So he asked the firm representing him to call.

## **ARGUMENT:**

***1. It is alleged that (the Member) acted inappropriately in court, and that such conduct is deserving of sanction.***

[63] Counsel for the Law Society of Alberta states that the commentary on Rule 12 of Chapter 10 states that:

"A lawyer's dealings with the court must be courteous and respectful."

[64] The commentary says:

"As officers of the court, lawyers are obliged to maintain the dignity, order and decorum of judicial proceedings so that the legal system functions properly. Disrespect for the court displayed by counsel, clients or witnesses would erode the confidence of the public in the administration of justice."

[65] Law Society Counsel states that Justice Sulatycky thought that he needed to intervene. Reference was then made to the words of Justice Sulatycky in the transcript of proceedings on March 6 2007. In particular, page 5 of Exhibit 11 beginning at line 8:

"You should let opposing counsel finish before you interrupt. All right. You're - - if you continue behaving that way, you are at risk of never being admitted to the bar, sir. "

[66] We are urged by counsel to accept the admonishment as an indication of the seriousness with which Justice Sulatycky took that incident.

[67] Further, counsel for the Law Society states that the fact that Justice Sulatycky asked the Member to leave the courtroom on March 9, 2007 is further evidence of the seriousness with which the Court viewed the Member's behavior.

[68] Counsel for the Law Society states that it does not matter what the Member's gestures were. The behavior was viewed by the Court as being serious enough to be admonished in the first instance and merited ejection from the courtroom in the second instance.

[69] Counsel for the Member agreed that this citation arises directly from the two transcripts. He intimates that if the Law Society intervenes and charges lawyers every time opposing counsel interrupts during court applications there will be an excessive number of hearings about this aspect of lawyers conduct. It is his position that the important thing is that the Member apologized and after being admonished and the application went forward and was resolved in his client's favor.

[70] Regarding the March 9, 2007 appearance in Chambers, Counsel for the Member agrees that whatever the offending gestures were they were sufficient to irritate Justice Sulatycky to the point where the Member was asked to leave the courtroom. He argues that again what is important is that the Member apologized and appropriate action was taken.

[71] The Member's lawyer states that the behavior was not sufficiently egregious that Justice Sulatycky forwarded the transcript to the Law Society.

[72] Counsel for the Member urges the Committee to say:

Yes, it should not have happened;  
Yes, he apologized; and  
Yes, he was a student; and  
Yes, he has learned

and let it go at that.

**2. *It is alleged that (the Member), on March 10, 2007, represented to a Calgary City Police officer that (he was) a lawyer, and that such conduct is deserving of sanction.***

[73] Law Society Counsel states that there is an issue of credibility that must be determined.

[74] On the one hand there is evidence that the Complainant was taunting the Member by calling him a “student-at-law” and so on. On the other hand the police officer recalls the Member identifying himself as a lawyer and not a student.

[75] Counsel for the Law Society argues that taunting the Member with the repeated words “student-at-law” seems like an odd thing to do. He asks the panel to inquire: “Why would she do it?” He argues that even if the Complainant did do it then it does not derogate from the citation. He offers the suggestion that there was no love lost between the Member and the Complainant and that she may have used the words “student-at-law” in an effort to correct the Member’s representation that he was a lawyer. Counsel for the Law Society states what is important is the representation made by the Member not what the Complainant said.

[76] In his submissions, Counsel for the Member pondered “(whether) all of these people (that gave testimony) were at the same house at the same time.” Nevertheless, he argues that the Member was not intending to mislead anyone because such a statement is inconsistent with the fact that the Member went to get a letter and bring it to the policeman. The letter shows on the face of it that the Member is a student. He says that the policeman could not have been misled because of the letter and because of the Complainant’s chanting.

[77] Counsel for the Member also referred the Committee to the definition of lawyer in the Code:

“Lawyer means an active member of the Law Society, an inactive member of the Law Society, a suspended member of the Law Society, a student-at-law and a lawyer entitled to practice law in another jurisdiction ...”

[78] He states that being a lawyer means being a student. Ergo, being a student means being a lawyer. He argues that this citation should fail for this reason alone.

**3. *It is alleged that (the Member) attempted to contact the Complainant at the Woman’s Emergency Shelter, and that such conduct is deserving of sanction.***

[79] Law Society Counsel states that the Member does not deny making the call. He says that the Member’s representation that he was trying to find out where the child of the marriage was and not the Complainant is disingenuous. When you find out where the child of the marriage is, you find out where the Complainant is. The panel is urged to find that the conduct of the Member is improper in two respects:

Firstly, there is counsel involved, Ms. Widdowson, so why not contact her. The fact that the Member attempted to contact an opposing party at all is inappropriate where counsel represents the opposing party.

Secondly, Counsel for the Law Society states that the Complainant was at the Women’s Shelter a place where she should expect to be safe and secure from threats or contact from the Member.

[80] Counsel for the Member argues that there is no evidence of the Member attempting to contact the Complainant. He states that the evidence is that he was trying to determine if the child of the marriage was at the Woman's Shelter.

**4. *It is alleged that (the Member) failed to provide the Complainant with her corporate minute book and file, or prevented the Complainant from obtaining her corporate minute book and file, and that such conduct is conduct deserving of sanction.***

[81] Counsel for the Law Society points out that the Member gave the corporate documents to A.B. in January, 2007. If the Committee is willing to accept that the Member acted in good faith with the expectation that A.B. would pass the documents on to the Complainant then there is nothing improper in giving the documents to A.B.

[82] Counsel for the Law Society states that in order to find that this citation is made out the committee must find that the documents were not out of the Member's control.

[83] Counsel for the Member argues that there is nothing in the evidence to support the citation other than the Complainant's suspicion and it should fail.

**5. *It is alleged that (the Member) acted in a matter when (his) objectivity to do so was impaired to the extent that (he was) unable to properly and competently carry out the representation, and that such conduct was conduct deserving of sanction.***

[84] Counsel for the Law Society makes reference to the commentary on Rule 8 of Chapter 6. Rule 8 states that:

“A lawyer must not act personally in a matter when the lawyer's objectivity is impaired to the extent that the lawyer is unable to properly and competently carry out the representation.”

[85] The commentary states:

“The two proceeding commentaries refer to situations in which a lawyer's professional objectivity in a matter may be threatened or destroyed by circumstances personal to the lawyer, such as a family or other close relationship; outside activity, a financial interest; or a strong belief or viewpoint.”

[86] It goes on to say:

“In all of these circumstances, a lawyer must recognize the point at which it is no longer in the client's best interests to be represented by the lawyer. This may be so even if the lawyer is led to unduly favor the client's position.”

[87] Counsel for the Law Society also offers the Canadian Oxford Dictionary definition of the word “objective” used as an adjective:

“Of a person or an opinion not influenced by feelings or personal bias.”

[88] Counsel for the Law Society argues that the Member had very strong and powerful feelings about A.B.’s divorce, the separation and the Complainant. He is very much in favor of his family and A.B. and very much against the Complainant. Counsel for the Law Society argues that the Member unduly favored A.B.’s position. Evidence of this shows up in descriptions the Member gives of the Complainant. Examples cited are as follows:

The description the Member gave of the Complainant;  
The characterization of the Complainant fleeing the matrimonial home for her safety as abandonment;  
The characterization of the Complainant taking the child of the marriage to the Woman’s shelter as abduction;  
The talk of the Complainant’s erratic behavior; and  
The characterization of the Complainant recovering items from the matrimonial home under the supervision of A.B.’s father and the police as “ransacking the premises”.

[89] Counsel for the Law Society states that the fact that the Member was involved in the attendance to the house on March 10, 2007 was further evidence of the Member’s lack of objectivity. Other parties were present to assist in a real estate transaction.

[90] Counsel for the Law Society argued that it was also unusual for a divorcing spouse to be put under surveillance. It was unusual for the Member to personally attend at the Complainant’s home to pick up hockey tickets. He questions: “Why is the Member involved in A.B.’s divorce at all?”

[91] In argument, Counsel for the Law Society also made reference to Page 19, line 5 of Exhibit 12 where Justice Sulatycky, talking to Mr. Zinner states:

“Your client A.B. is entitled to be here but your student, who happens to be a relative and obviously has some personal interest, should not be here.”

[92] Counsel for the Member argues that in order for this citation to be made out there is a two-part test:

First, the Member must have had impaired objectivity; and  
Secondly, that impaired objectivity must have rendered the Member unable to properly and competently carry out the representation.

[93] He states that even if one assumes that the first part of the test is made out, the second part of the test is not made out.

## **DECISION:**

[94] The Committee is of the view that Citations 1, 2 and 5 are made out and that Citations 3 and 4 are not made for the reasons that follow:

***1. It is alleged that (the Member) acted inappropriately in court, and that such conduct is deserving of sanction.***

[95] Rule 12 of Chapter 10 of the Code of Professional Conduct states:

“A lawyer’s dealings with the court must be courteous and respectful.”

[96] The commentary says:

“As officers of the court, lawyers are obliged to maintain the dignity, order and decorum of judicial proceedings so that the legal system functions properly. Disrespect for the court displayed by counsel, clients or witnesses would erode the confidence of the public in the administration of justice. A lawyer must therefore remain respectful and self-controlled and must take reasonable steps to ensure that those subject to the lawyer’s direction act in a similar fashion.

The duty of respect includes the obligation to be punctual and to honor to the letter any formal or informal arrangement made with the court. It does not, however, oblige counsel to be timid or subservient in presenting a case on behalf of a client. The lawyer has a right to be heard and must be courageous and forceful, if necessary, in exercising that right and in making objections where appropriate.”

[97] In this case the Member interrupted opposing counsel on March 6, 2007 to the extent that the Court found it necessary to offer a severe reprimand and admonishment. The admonishment did not come in the form of friendly advice from the Court but rather in the form of a stern warning:

“You should let opposing counsel finish before you interrupt. All right. You’re - - if you continue behaving that way, you are at risk of never being admitted to the bar, sir. As a student at law, you should know that you understand proper courtroom behavior. All right? ...”

[98] Justice Sulatycky was so annoyed that he pointed out to the Member that he was at “... risk of never being admitted to the bar ...” These are not words of friendly advice but are measured words of warning from a presiding Justice of the Court of Queen’s Bench. Interruptions in Court in some circumstances may be appropriate. This may be when counsel wants to make a cooperative comment to support or reinforce another’s point without disrupting the flow of the representations being made.



[99] Contrastingly, if counsel attempts to disrupt the flow of representations being made, attempts to prevent opposing views from being heard or attempts to force his or her remarks to higher priority by frequent and incessant interruption such behavior may be inappropriate for a courtroom. A lawyer “has a right to be heard and must be courageous and forceful, if necessary, in exercising that right”, nevertheless the overriding obligation is to “maintain dignity, order and decorum in judicial proceedings so that the legal system functions properly.”

[100] The transcript of proceedings on March 6, 2007 reflects interruption that may only be characterized as aggressive, disharmonious, confrontational, and conflictual. The Court found the behavior to be inappropriate and the Member was sternly admonished. If the matter had ended there, perhaps the stern warning would have been enough but the behavior did not end there.

[101] On March 9, 2007 the Member again found himself Justice Sulatycky’s courtroom. This time Justice Sulatycky saw fit to ask the Member to leave his courtroom. The transcript states in part:

THE COURT: ... not convenient to the child. You are talking about the best - - quit your antics. I had cause to admonish your student earlier this week. I do not recall exactly what it was but he was - - interrupted opposing counsel inappropriately and you have to spend some time with Mr. Terrigno, to teach him about proper court room behavior, including gestures such as he just made. That is not appropriate for counsel. All right?

MR. ZINNER: Thank you, My Lord.

THE COURT: And students are here at the will of the Court. I would ask that you ask your student to leave.

[102] It is apparent that Justice Sulatycky did not countenance a repeat performance by the Member on March 9, 2007. During the inappropriate behavior on March 6, 2007 the Justice saw fit to administer an admonishment. During the second exchange Justice Sulatycky was again so annoyed by the Member’s repeated inappropriate behavior that he ejected the Member from his courtroom. Rather than learning from his first experience the Member again acted in a manner that the Court found offensive.

[103] The Member made statements of apology to the Court for his behavior on both occasions. He is to be neither commended nor criticized for the statements. However, it needs to be pointed out that making a regretful acknowledgement of fault embodies more than simply saying the words “I just wanted to apologize to my friend here for the interruption” or “I apologize if I have offended the Court”. These words are empty without a complete and honest commitment by the Member to the apology demonstrated by effort to change the behavior complained of. There is no indication of that here. Rather, there is an indication that the first admonishment for inappropriate behavior had little or no effect. This is evidenced by the fact that the second incident occurred at all.

[104] Taken as a whole, on the balance of probabilities, there is little doubt that the Member acted inappropriately in court, and that such conduct is deserving of sanction.

[105] Counsel for the Member urges the Committee to say:

Yes, it should not have happened;  
Yes, he apologized; and  
Yes, he was a student; and  
Yes, he has learned

and let it go at that.

[106] The Committee says:

Yes, it should not have happened;  
Yes, he apologized; and  
Yes, he was a student; but  
No, he did not learn.

[107] We are unable to let it go at that. Citation number 1 has been made out for the reasons noted above.

**2. *It is alleged that (the Member), on March 10, 2007, represented to a Calgary City Police officer that (he was) a lawyer, and that such conduct is deserving of sanction.***

[108] All parties agree that this citation turns in the first instance on the credibility of the Member, his witnesses and the credibility of the Law Society's witnesses.

[109] Counsel for the Law Society argued that taunting the Member with the repeated words "student-at-law" seems like an odd thing to do. He asks the panel to inquire: "Why would she do it?" He argues that even if the Complainant did do it then it does not derogate from the citation. He offers the suggestion that there was no love lost between the Member and the Complainant and that she may have used the words "student-at-law" in an effort to correct the Member's representation that he was a lawyer. Counsel for the Law Society states what is important is the representation made by the Member not what the Complainant said.

[110] It does not ring true that the Complainant taunted the Member by chanting the words "student-at-law ... student-at-law". This chant seems like a very unnatural thing for the Complainant to say or do. It does not seem probable or plausible. The testimony on this point seemed rehearsed. The evidence of the Member and his witnesses in this regard is simply not credible.

[111] The Complainant testified that the Member repeatedly shouted the phrases "you're not allowed to be here", "You don't have the paperwork," "You have to leave,"

“I’m a lawyer and you have to get out of here.” Although it seems that the first three statements may be an accurate recollection of what the Member was saying to the Complainant it does not make sense that the Member would try to bully the Complainant by saying he was a lawyer when the Complainant knew that the Member was a student.

[112] The evidence of the Constable Brady is that the Member claimed he was a lawyer, A.B.’s lawyer and that he had documentation that the Complainant did not have any right to be at the home. It makes sense that the Member claimed he was a lawyer before Constable Brady. The Member did this in an attempt to increase his status, credibility or authority with the police officer. Constable Brady was the most credible witness in this exchange. He has nothing to gain or lose by his evidence. He has no axe to grind. His testimony was logical, natural and cogent.

[113] On the one hand there is evidence that the Complainant was taunting the Member by calling him a “student-at-law” and so on. On the other hand the police witness recalls the Member identifying himself as a lawyer and not a student. The evidence of Constable Brady is to be preferred wherever there is a conflict between the evidence of the Member, his witnesses and Constable Brady. As such, it is the finding of this Committee that the Member identified himself as a “lawyer” not as a “student” during the material time on March 10, 2007.

[114] Counsel for the Member referred the Committee to the definition of lawyer in the *Code of Professional Conduct*:

“(n) **“lawyer”** means an active member of the Law Society, an inactive member of the Law Society, a suspended member of the Law Society, a student-at-law and a lawyer entitled to practice law in another jurisdiction who is entitled to practice law in Alberta. A reference to “lawyer” includes the lawyer’s firm and each firm member except where expressly stated otherwise or excluded by the context;”

[115] He states that being a lawyer means being a student. Ergo, being a student means being a lawyer. He argues that this citation should fail for this reason alone.

[116] With respect, we do not agree.

[117] The definition of “lawyer” in the *Code of Professional Conduct* is intended to be inclusive such that application of the Code extends to all individuals and firms defined as lawyers in the Code and to eliminate confusion about to whom the Code applies. It was not intended to indicate that the description “student-at-law” and “lawyer” are interchangeable. Nor was it intended to infer that students-at-law might identify themselves as lawyers. If such were the case there would be no need for the additional definition in the *Code of Professional Conduct* of a student-at-law:

“(s) **“student-at-law”** means a person admitted to the Law Society as a student-at-law.”

[118] In any event, the *Rules of the Law Society* not the *Code of Professional Conduct* contain guidance regarding the appropriate identification of students-at-law.

[119] Rule 52 (6) of the Rules of the Law Society of Alberta states:

“A student-at-law must be identified as such:

- (a) in any law related promotional material that names the student-at-law; and
- (b) in any matter where the student-at-law is involved in providing legal services and that involvement is apparent to anyone outside of the student’s firm.”

[120] For the reasons noted above the Committee finds that the Member on March 10, 2007 represented to a Calgary City Police officer that he was a lawyer, and that such conduct is deserving of sanction.

**3. *It is alleged that (the Member) attempted to contact the Complainant at the Woman’s Emergency Shelter, and that such conduct is deserving of sanction.***

[121] The Member does not deny calling the Women’s Shelter. His evidence is that he was attempting to find out where A.B.’s child was located. The Complainant’s evidence is that a few counselors at the women’s shelter had answered phone calls from individuals looking for the Complainant. During one of the calls a person identified himself as the Member and said he worked for a law firm, however, when asked which law firm, the Member hung up the phone.

[122] The evidence of the Complainant directly on point in this matter is hearsay. There is no further evidence of the Member attempting to contact the Complainant. As such this citation is not made out.

**4. *It is alleged that (the Member) failed to provide the Complainant with her corporate minute book and file, or prevented the Complainant from obtaining her corporate minute book and file, and that such conduct is conduct deserving of sanction.***

[123] The Members evidence on point in this matter is that he gave the corporate documents to A.B. in January 2007. There is no other evidence to refute this testimony. Law Society Counsel has argued that if the Committee is willing to accept that the Member acted in good faith with the expectation that A.B. would pass the documents on to the Complainant then there is nothing improper in giving the documents to A.B.

[124] In the absence of any evidence of bad faith on the part of the Member it must be presumed that the Member acted in good faith with the expectation that A.B. would pass the documents on to the Complainant. As such the Law Society has failed to make out an essential element of this citation.

[125] Counsel for the Law Society also conceded that in order to find that the citation is made out the Committee must find that the documents were not out of the Member's control. There was no evidence presented that suggests that the documents were in the control of the Member, as such the Law Society failed to make out a further essential element of the citation.

[126] The Committee is of the view that there is no evidence to support the citation other than the Complainant's suspicion. As such citation number 4 is not made out.

**5. *It is alleged that (the Member) acted in a matter when (his) objectivity to do so was impaired to the extent that (he was) unable to properly and competently carry out the representation, and that such conduct was conduct deserving of sanction.***

[127] Rule 8 of Chapter 6 of the *Code of Professional Conduct* states:

“A lawyer must not act personally in a matter when the lawyer's objectivity is impaired to the extent that the lawyer would be unable to properly and competently carry out the representation.”

[128] The commentary to the Rule states:

“The two preceding commentaries refer to situations in which a lawyer's professional objectivity in a matter may be threatened or destroyed by circumstances personal to the lawyer, such as a family or other close relationship; an outside activity, a financial interest; or a strong belief or viewpoint. Another example is a mental state created or exacerbated by a particular representation, such as feelings of enmity towards a colleague acting for an opposing party.”

[129] It goes on to say:

“In all of these circumstances, a lawyer must recognize the point at which it is not or is no longer in the client's best interests to be represented by the lawyer. This may be so even if the lawyer is led to unduly favor the client's position, since the result may be overly-optimistic advice or an unrealistic recommendation.”

[130] There is no question that the Member's professional objectivity was threatened or destroyed by circumstances personal to the Member. The Member had very personal and powerful feelings about his family, A.B.'s divorce and separation and the Complainant. He demonstrates bias in favor of his blood relations and against the Complainant.

[131] The Member's bias and loss of objectivity is demonstrated by the way that the Member characterized events:

The characterization of the Complainant fleeing the matrimonial home for her safety as “abandonment”;

The characterization of the Complainant taking the child of the marriage to the Woman's shelter as "abduction" or "quasi abduction";  
The talk of the Complainant's "erratic behavior"; and  
The characterization of the Complainant recovering items from the matrimonial home under the supervision of A.B.'s father and the police as "ransacking the premises".

[132] The loss of objectivity is also demonstrated in the Member's correspondence, descriptions of the Complainant, unnecessary surveillance of the Complainant, the Member's personal animosity toward the Complainant and the financial entanglements of the Member.

[133] The Member's involvement in the affairs of A.B. served to heighten conflict. One example of this is cited by Constable Brady in describing the behavior of the Member when he attended the Matrimonial Home on March 10, 2007:

"(the Member) showed up and at the onset he was very abusive, very confrontational, both towards me and (the Complainant) and the others that were there to help her with her move. Things got so heated that I had to contact my sergeant to have him attend the residence just to keep things from escalating, as I feared that they would."

[134] One may question why the Member was professionally engaged in the affairs of A.B. at all.

[135] The big risk in acting for family members is the inability to give honest, independent and objective advice. No matter how hard someone may try, when dealing with family, the ability to give independent advice is affected. It is necessary to maintain a professional distance from clients and disconnect emotionally. This is extremely difficult to do with family Members and the result is almost always clouded judgment.

[136] There may be circumstances when it is appropriate to act for a family member. These situations must necessarily be routine and uncontroversial in nature. Emotionally charged circumstances, such as hotly contested divorces and separation, should likely be avoided.

[137] In the Committee's view, this is a situation where the Member had a professional duty to decline to act. The dispute between A.B. and A.B.'s estranged wife were hotly contested. A.B.'s wife had fled to the women's shelter. It was deemed necessary to bring an application to prevent A.B.'s from fleeing the jurisdiction. There were contested court applications. The Member was in a situation where his very presence agitated and complicated the proceedings. The Member's behavior, comments and conduct indicate that his objectivity was interfered with to such an extent that he was unable to competently carry out his representation.

[138] The Practice Advisor's notes of February 13 and 16, 2007 detail a conversation between the Member and Advisor Nancy Carruthers concerning, among other things, whether it was appropriate for the Member to represent A.B. concerning a civil litigation matter.

[139] No specific details are available but it appears from the notes that the Member expressed concern about representing a family member and was advised he could do so, so long as his objectivity was not affected by his relationships with the various parties.

[140] Counsel for the Member argued that in order to find the Member guilty of Citation 5 this committee must distinguish it from the other four citations and, additionally, find a negative impact on the client as a consequence of the Member's representation and loss of objectivity.

[141] Fortunately we do not have to consider this question because there is ample evidence independent of the evidence supporting the previous citations that supports Citation 5.

[142] The Member's counsel suggests that there has to be some harm to the client in order for the Citation to stand. With the greatest of respect we do not agree.

[144] The Citation requires a finding that the Member was "unable to properly and competently carry out the representation". The question is therefore: "What are the elements of proper and competent representation of a client?"

[145] The Preface of the Code of Conduct states:

"First, a lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Second, a lawyer's conduct should be above reproach. While the Law Society is empowered by statute to declare any conduct deserving of sanction, whether or not it is related to a lawyer's practice, personal behaviour is unlikely to be disciplined unless it is dishonourable or otherwise indicates an unsuitability to practise law. However, regardless of the possibility of formal sanction, a lawyer should observe the highest standards of conduct on both a personal and professional level so as to retain the trust, respect and confidence of colleagues and members of the public."

[146] In order to accept counsel for the Member's argument, it is necessary to concede a narrow definition of proper and competent representation. If the only criteria necessary to provide proper and competent representation is that there is no harm to the client's case then all manner of reproachable behaviour would not result in a finding of improper representation.

[147] Representation of a client includes:

A lawyer's duty to his or her client;

A lawyer's duty to the Court;  
A lawyer's duty to the profession; and, above all,  
A lawyer's duty to the public.

[148] The Member may not have caused harm to his client's case. If such is the case, this is indeed fortunate. That does not mean that the representation was proper and competent. The Member's characterizations of the Complainant's motives and behaviour have only served to bring the administration of justice into disrepute. In doing so the Member failed in his duty to the Court, his duty to the profession and his duty to the public. Ultimately, this has resulted in a failure to properly and competently represent the client.

[149] For the reasons noted above the Committee finds that the Member acted in a matter when (his) objectivity to do so was impaired to the extent that he was unable to properly and competently carry out the representation, and that such conduct was conduct deserving of sanction.



**INCIDENTAL:**

[150] Vivian Stevenson concurs in the result.

[151] This matter shall be scheduled for a hearing as to sanction at the mutual convenience of the panel and the parties.

Dated this 31st day of March, 2010

\_\_\_\_\_  
Anthony G. Young (Chair)

\_\_\_\_\_  
Vivian Stevenson Q.C.

\_\_\_\_\_  
Wayne Jacques

**DECISION ON SANCTION**

On June 15, 2010 the Hearing Committee reconvened to decide the appropriate sanction. After hearing evidence and argument the Hearing Committee directed the member be reprimanded and pay the actual costs of the hearing in the amount of \$5,402.25.

**IN THE MATTER OF *THE LEGAL PROFESSION ACT***

**AND**

**IN THE MATTER OF A HEARING REGARDING THE  
CONDUCT OF MICHAEL TERRIGNO,  
A MEMBER OF THE LAW SOCIETY OF ALBERTA**

**ADDENDUM**

**PRELIMINARY MATTERS**

[152] On June 15, 2010 the Hearing reconvened to receive representations from counsel for the LSA and counsel for the Member as to sanction.

[153] Vivian Stevenson, Q.C., an original member of the Hearing Committee was not available to reconvene. Section 66(3) of the Legal; Profession Act states:

“**66 (3)** If after the commencement of a hearing the membership of a Hearing Committee is reduced, the remaining members of the Hearing Committee may continue to act as the Hearing Committee if at least 2 members of the Committee remain.”

[154] By letter dated May 27, 2010 from the LSA to each of counsel for the Member and counsel for the LSA indicated their consent to proceed with the two remaining members of the Hearing Committee, being, Anthony G. Young, Q.C. (Chair) and Wayne Jacques. As such, the hearing continued.

**ARGUMENT AS TO SANCTION**

***The LSA***

[155] Counsel for the LSA submitted that the termination of the Member’s Articles of Clerkship or a lengthy suspension should be imposed by way of sanction upon the Member. In support of this submission counsel for the LSA pointed out that the Member was not contrite, lacks integrity and “does not get what being a lawyer is about.”

[156] In particular, counsel for the LSA stated that the Member lied to a police officer with respect to his status as a lawyer and he lied to this hearing committee. In protecting the public interest an integrity issue is vital to the professional duty of any lawyer.

[157] The Hearing Committee was directed to a Law Society Hearing Report with respect to R.R., a Student-at-Law of the Law Society of Alberta. This decision was offered in support of the proposition that “an act of dishonesty has generally resulted in a suspension.”

[158] Counsel for the LSA emphasized that this sanctioning hearing is about integrity. The Hearing Committee was directed to Paragraph 67 of the Hearing Guide which states, in part, that:

“The requirement that lawyers must be of good character finds expression also in what is in most jurisdictions not coincidentally the first rule of professional conduct: lawyers must discharge with integrity all duties owed to clients, the court, the public, and other members of the profession. “Integrity”, first commentary to this rule says, “is the fundamental quality of any person who seeks to practice as a member of the legal profession.”

“Lawyers who by their conduct have proven to be lacking in integrity are likely to lose their right to practice.”

”The requirement that applicants be of good character is preventative, not punitive. It recognizes that character is the well-spring of professional conduct and lawyers. By requiring lawyers to be of good character, law societies protect the public and reputation of the profession from potential lawyers who lack the fundamental quality of any person who seeks to practice as a member of the legal profession, namely, integrity.”

[159] Counsel for the LSA seeks a termination of articles and costs.

### ***The Member***

[160] Counsel for the Member states that although the Member has been found guilty on 3 charges the events:

- (a) occurred more than 3 years ago;
- (b) occurred while he had just started articling; and
- (c) relate to a family matrimonial matter that the Member found to be emotionally tough.

[161] Regarding Citation 1, it is conceded that the Member should not have involved himself in his brother’s matrimonial matter. It was also conceded that the Member is an emotional and excitable person. Counsel for the Member argued that these facts should not be an issue in preventing him from pursuing a career.

[162] Counsel asked the Hearing Committee to consider that all 3 convictions relate to one short time frame and one file. All of what occurred can be attributed to that set of circumstances, in Counsel’s submission.

[163] The LSA had charged the Member in another matter with attempting to mislead with respect to his Articles of Clerkship. He was convicted and suspended. This decision was appealed to the Benchers and was overturned. (Michael Terrigno,

Applicant, *A Student at Law of the Law Society of Alberta v. The Law Society of Alberta*, Decision of the Law Society Appeal Panel dated March 22, 2010) Counsel argued that an Appeal Panel of the LSA has found that the Member was receiving poor guidance and getting inadequate or little supervision from his Principal at the time in question.

[164] Counsel suggested that it is noteworthy that the problems that the Member had in front of Justice Sulatycky occurred while he was in court with Gabor Zinner, a gentleman that the LSA has found not to be a suitable Principal.

[165] It was not argued, by counsel for the Member, that the facts outlined from paragraph [160] herein excuse what happened. Rather, the facts offer context. That is, the Member was a new articling student, excitable by nature, acting on an emotional file without adequate guidance from his Principal.

[166] With respect to Citation 2, Counsel for the Member specifically denies any aggravating factor that demonstrates that the Member lied. The Member stated “I do not recall representing myself as a lawyer” and “I made it clear I was a student”. During the debate with Constable Brady, the Member went and got a letter that indicated clearly that the Member was a student. It was suggested by Counsel that the Member did not say he was a lawyer to deceive anyone, because if he was trying to deceive he would not have gotten a letter that said he was a student. It was argued that the Member acted in a heightened emotional state. He did not deceive anyone.

[167] Speaking to Citation 5, Counsel for the Member reiterated that he had conceded that the Member should not have been involved in his brother’s divorce.

[168] Counsel for the Member argues that the R.R. decision is for a far more serious breach of standards. In that case, the member perjured himself for his own benefit. He wanted to cover up the fact he was a drunk driver and he had a record for drunk driving.

[169] Counsel for the Member suggested that a reprimand is appropriate in the circumstances and he should pay 60% of the costs of the hearing in light of his success on being convicted only on 3 of 5 citations.

## **DECISION AS TO SANCTION**

[170] The Hearing Guide states at Page 9 that:

“The purposes of law society discipline proceedings are not to punish offenders and exact retribution, but rather to protect the public, maintain high professional standards, and preserve public confidence in the legal profession.

[171] This is a very difficult case. On the one hand LSA counsel argues that there should be a lengthy suspension or even a termination of articles. Counsel for the Member argues for a reprimand.

[172] In making our decision regarding sanction, it has been noted that the Member's impugned conduct arose when the Member was an articled student, with little or no guidance and inadequate supervision given. The Member became embroiled in a family matter where his objectivity was impaired. His counsel concedes that he should not have been acting in such a case. The fact that he did act may have created a cascade of events resulting in the unacceptable conduct in this case. Had the Member received guidance and adequate supervision perhaps the conduct complained of in this case would not have occurred.

[173] The Hearing Committee does not view the conduct of the Member, although serious and inexcusable, to be as serious as that exhibited in the R.R. matter. The conduct of the Member does not exhibit a planned intention to deceive as was found in the R.R. case. R.R. admitted that he drafted his false statutory declaration "to try and make his conduct appear more favourable in the eyes of the Law Society". The statutory declaration took planning and thought to draft and execute.

[174] In the instant case, this Hearing Committee found that the Member made the statement that he was a lawyer to "increase his status, credibility or authority with the police officer." The difference between this case and the R.R. matter is that the Member's statements were made in the heat of the moment while he was in a heightened emotional state. There is no evidence that it was planned or premeditated as in the R.R. case.

[173] The question that must be asked is whether it is necessary, in the circumstances, to impose a suspension or termination of articles to protect the public or to preserve public confidence in the legal profession? In this Hearing Committee's opinion, it is not.

[174] There is no way to determine whether the Member would have reacted differently if he had received proper instruction and guidance from a well qualified Principal. He may still have undertaken the conduct that brings him before this Hearing Committee. Nevertheless, this uncertainty is not reason enough for the Member's articles to be terminated. Fairness dictates that the Member must be given a chance to succeed as a lawyer. Protection of the public may be secured by proper monitoring and by ensuring that the Member receives adequate instruction and guidance during the remainder of his articles. This result is not something that will cause a loss of public confidence in the legal profession. Students are expected to make mistakes and often have errors in judgment. The proof will be in how this Member conducts himself in the future.

[175] The threshold for suspension or termination of articles, is not, in our opinion, met. The Hearing Committee is of the opinion that the Member should receive a reprimand and that the Member will be required to pay the full costs of the hearing.

[176] The Chair of the Hearing Committee administered the reprimand paraphrased as follows:

“A lawyer is expected to establish and maintain a reputation for integrity, the most important attribute of a member of the legal profession. Your conduct should be above reproach.

Lawyers, who, by their conduct, are proven to be lacking integrity are likely to lose their right to practice.

This Hearing Committee found that your interruptions in court were aggressive, disharmonious, confrontational, and conflictual. The Court found this behavior to be inappropriate and you were admonished in the courtroom.

You are being admonished again.

Later before that same Justice on a different day, you made gestures that were offensive to the Court. You were again admonished. You were asked to leave the courtroom.

You are being admonished again.

This behavior is inexcusable.

You are expected, as a member of this profession, to exhibit conduct that is beyond reproach. Your conduct in court failed to meet this standard. Conduct of this nature only serves to harm you, your reputation and the reputation of lawyers generally.

You made an apology. Your apology must have substance and meaning. Without that, they are simply words. The best apology that you can now give is not to repeat any of this behavior.

As a lawyer and a student-at-law you must take care in the words that you choose when you are communicating. Your very status as a lawyer or student-at-law gives you privileged status and instant credibility in what you say. You are expected to act accordingly. It is imperative that the words that you use do not mislead, intentionally, unintentionally or for any other reason.

When you find yourself in a situation where you are agitated, upset or excited you better ask yourself whether you should be continuing to act. If your judgment is impaired and you continue on you may again be before a Hearing Committee answering similar citations.

This Hearing Committee does not know how you will change your attitude. It does not know how you will change the way you conduct yourself. Many of these things may be internal to you. Your behaviour has to change. If your behaviour has changed you have the Hearing Committee's congratulations. If it has not or

does not change then it is likely that you will be seeing a Hearing Committee like this again.”

**INCIDENTAL**

[177] This proceeding together with the two documents exhibited on June 15, 2010 shall be public.

[178] There will be no referral to the Attorney General.

[179] There shall be the usual redactions in Hearing Committee report and Exhibits before public release.

[180] Costs in this matter shall be payable within 30 days of receiving written notification of the same.

Dated this 26<sup>th</sup> day of March, 2011

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Anthony G. Young, Q.C. (Chair)

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Wayne Jacques