

**THE LAW SOCIETY OF ALBERTA**  
**IN THE MATTER OF THE LEGAL PROFESSION ACT, R.S.A. 2000, c. L-8,**

**- and -**

**IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF MICHAEL TERRIGNO,  
A STUDENT-AT-LAW OF THE LAW SOCIETY OF ALBERTA**

**HEARING COMMITTEE REPORT**

**HEARING COMMITTEE:**

Derek Van Tassell, Q.C., Chair

Neena Ahluwalia, Q.C., Committee Member

**COUNSEL**

Gillian Clarke, for the Law Society of Alberta and James Rooney, Q.C., for the Student-at-Law

**INTRODUCTION**

1. Michael Terrigno, a Student-at-Law with the Law Society of Alberta ("LSA"), is subject to conduct proceedings under the *Legal Profession Act*, RSA 2000, c.L-8, on the citation listed below.

**CITATIONS**

2. The following citation was referred to hearing by a panel of the Conduct Committee on January 19, 2012:
  1. It is alleged that your conduct in giving evidence at a civil trial breached the Code of Professional Conduct, and that such conduct is conduct deserving of sanction.

## PRELIMINARY MATTERS

### Fresh evidence application

3. On December 3, 2013, a Hearing Committee comprised of Larry Akerl, Q.C. (Chair), Derek Van Tassell, Q.C. and Neena Ahluwalia, Q.C. convened at the Law Society of Alberta ("LSA") offices in Calgary, Alberta. The hearing commenced on this date, with jurisdictional documents being entered by consent, and with the hearing of Michael Terrigno's application to adduce fresh evidence. This application was held in public. For this application, the LSA was represented by Gillian Clarke. Michael Terrigno was present at the application and was represented by Counsel, Mr. James Rooney, Q.C. Following oral submissions from Mr. Rooney on the application, Mr. Akerl, Q.C. became aware of a conflict of interest and recused himself. Pursuant to section 66(3) of the *Legal Profession Act*, and with the agreement of both counsel, the panel of Derek Van Tassell, Q.C. and Neena Ahluwalia, Q.C. continued for the remainder of the hearing, with Derek Van Tassell, Q.C. as Chair.
4. After hearing oral submissions from both counsel, Michael Terrigno's application to adduce fresh evidence was allowed, given that Michael Terrigno was not the focus of the litigation before the courts, and that an issue of fairness arose wherein the student-at-law should be given the opportunity to make a full and robust response. The panel does not believe we are bound by the trial judge's credibility findings.
5. At this point, the hearing was adjourned for rescheduling.
6. The hearing reconvened with the same panel and counsel on March 13, 2014; it was again held in Calgary, in public.

### Jurisdiction

7. The jurisdiction of the Hearing Committee was established with the admission by consent of the Exhibits 1 to 5, listed below. An Agreed Exhibit Book containing Exhibits 1 to 10 was entered by consent on December 3, 2013:

Exhibit 1	Letter of Appointment
Exhibit 2	Notice to Solicitor
Exhibit 3	Notice to Attend
Exhibit 4	Certificate of Status
Exhibit 5	Certificate of Exercise of Discretion re: Private Hearing Application Notices
Exhibit 6	Reasons for Judgment of Justice McCarthy
Exhibit 7	Court of Appeal Memorandum of Judgment

- Exhibit 8 Judgment from the Supreme Court of Canada (leave to appeal dismissed)
- Exhibit 9 Copy of Factum of the Appellants (appeal from the Judgment of Justice McCarthy)
- Exhibit 10 Agreed Statement of Facts and Admission of Guilt, dated February 19, 2014

The following Exhibits were entered on March 11, 2014:

- Exhibit 11 Michael Terrigno's discipline record
- Exhibit 12 Estimated Statement of Costs

### **Other**

8. The Parties had no objection to the composition of the Committee.
9. The Committee was advised that no party had applied to have either the application or the hearing held in private, and as a consequence, the application and hearing both proceeded in public.

### **FACTS**

10. The LSA and Michael Terrigno had entered an Agreed Statement of Facts and Admission of Guilt (attached as Schedule A) by consent. Mr. Rooney acknowledged on behalf of his client that the facts and admissions were given voluntarily and free of undue coercion, and that Mr. Terrigno unequivocally admits guilt to the essential elements, understands the nature and consequences of his admission, and he also understands that the Hearing Committee is not bound by joint submissions of counsel.

### **ANALYSIS**

11. Pursuant to section 60 of the *Legal Profession Act*, we accept the Agreed Statement of Facts and Admission of Guilt. On March 11, 2015, counsel made a joint submission as to both guilt and sanction, both of which are accepted by the Committee as well.

### **DECISION**

12. The sanction for this matter is both a reprimand, which was delivered orally at the hearing, and reproduced in the footnote<sup>1</sup> below, and a \$10,000 fine. As for costs, there

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<sup>1</sup> Mr. Terrigno, you have an MBA. You continue to be an articling student. There is little doubt in my mind that you are obviously very smart and quite persistent. That being said, you've had a very troubling history over a short period of time and this history does concern me. You're quite lucky that both your counsel and counsel for the Law Society of Alberta expressly conveyed to us how this current citation is different from your past matters.

will be no costs for the December 3, 2013 application, however Michael Terrigno is responsible for paying 75% of the costs listed in Exhibit 12, being \$8,562.09, with time to pay of 9 months.

### **CONCLUDING MATTERS**

13. In the event of any request for public access to the evidence heard in these proceedings, there shall be the standard redaction order of all third party names and identifying information from the Agreed Statements of Facts and Exhibits.
14. No referral to the Attorney General is directed.
15. There shall not be a Notice to the Profession.

Dated this 4<sup>th</sup> day of June, 2015.

Derek Van Tassell, Q.C., Chair

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Neena Ahluwalia, Q.C.

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Otherwise you would have been looking at something much more serious than a reprimand. Your pattern of behavior needs to stop. I'm mindful that you have been to Practice Review and taken anger management courses. These are positive steps that should benefit you in the future. Notwithstanding that you have a principal right now. You may still want to use the Law Society of Alberta's mentor program. It doesn't hurt to have another individual that you can ask questions of. This is your third reprimand in a very short career. With today's matter, your fines are in the neighbourhood of over \$45,000. This does make me question if fines are, in fact, a deterrent to you. You owe it to your profession, your regulator, the public, your counsel and yourself to do a better job. Your counsel Mr. Rooney mentioned that you have the longest articles in the history of the Law Society of Alberta. Seeing as to how that has arisen, that is definitely something that you should not be proud of.

## Schedule A

IN THE MATTER OF THE *LEGAL PROFESSION ACT*

and

IN THE MATTER OF A HEARING REGARDING

THE CONDUCT OF **MIKE TERRIGNO**,

A STUDENT-AT-LAW REGISTERED WITH THE LAW SOCIETY OF ALBERTA

### **AGREED STATEMENT OF FACTS AND ADMISSION OF GUILT**

1. Mike Terrigno is and at all times relevant to this proceeding was a student-at-law registered with The Law Society of Alberta.
2. Mike Terrigno faces 1 citation, as follows:

#### **Law Society Complaint (COXXXXXXXX)**

1. IT IS ALLEGED THAT your conduct in giving evidence at a civil trial breached the *Code of Professional Conduct* and that such conduct is conduct deserving of sanction.

### **FACT SUMMARY**

3. Mr. Terrigno commenced his articles in Alberta in November, 2006 and thereafter has retained the status of student-at-law pursuant to which he continues to work under an working arrangement approved by the Law Society of Alberta. Mr. Terrigno also holds a Master of Business Administration and at all times material to this proceeding, owned a company called M.C. and was the Chief Financial Officer (“CFO”) for O. Ltd.

4. At all times material to this proceeding, Mr. Terrigno was involved in or had knowledge about a number of O. Ltd.'s subsidiaries and related companies.
5. At all times material to this proceeding, Mr. Terrigno's parents were the principals of O. Ltd.
6. Mr. Terrigno's brother, M.T. (hereinafter referred to as the "Brother" or the "Husband") was involved in acrimonious divorce proceedings with Mr. Terrigno's then sister-in-law, M.K. (hereinafter referred to as "Wife"). The civil trial referenced in the Citation was a matrimonial property trial (the "Trial") of the Husband and Wife, held in the Court of Queen's Bench before the Honourable Justice J.T. McCarthy (the "Trial Judge"). The Wife was Plaintiff in these proceedings and the Husband was Defendant.
7. The distribution of matrimonial property was one of the major issues in dispute between the Husband and the Wife. Prior to the divorce proceedings, Mr. Terrigno, through his company, M.C., provided financial advice to the Husband, the Wife and O. Ltd. After the parties separated, Mr. Terrigno continued to provide financial advice to the Husband.
8. The Husband was employed as an owner/manager of O. Ltd.
9. The Trial took place over 22 days in September and October, 2010. Mr. Terrigno testified as a witness on behalf and in support of the Husband. He also provided evidence in his capacity as CFO of O. Ltd.
10. The Trial Judge issued his decision and Reasons for Judgment on April 6, 2011 (collectively, the "Trial Decision"). The Trial Judge made a number of findings relating to the reliability and credibility of the evidence provided by some of the witnesses at trial, including Mr. Terrigno. **[EXHIBIT 6]**
11. A copy of the Trial Decision was provided to the Law Society of Alberta and thereafter, on or about April 27, 2011, a formal complaint, with the Law Society listed as complainant was opened.
12. The Husband appealed the Trial Decision to the Court of Appeal on numerous grounds including, but not limited to, challenging the reliability and credibility findings the Trial Judge made in respect of Mr. Terrigno (and other witnesses). The Court of Appeal

issued its reasons on November 29, 2012 (“Appeal Decision”) dismissing the Appeal by a majority of 2 to 1. The dissenting justice dissented in part (discussed in more detail hereafter). **[EXHIBIT 7]**

13. The Husband made an application for leave to appeal to the Supreme Court of Canada (“SCC”) but leave was denied. **[EXHIBIT 8]**
14. It is the Trial Judge’s findings of Mr. Terrigno’s conduct as a witness at the Trial which is the subject of the Citation. Specifically, the aspects of the Trial Decision which are germane to these proceedings relate to the determination of the existence of a debt which the Husband alleged he owed to O. Ltd. in the sum of \$140,093.00 (the “Alleged Debt”). The issue in dispute was whether the amounts that comprised the Alleged Debt should be categorized as a debt owed by the Husband to O. Ltd. for drawing more than his share from O. Ltd. or income that never had to be repaid as alleged by the Wife.
15. The Trial Judge found that the Alleged Debt did not exist but rather, was conceived post-separation as a way of claiming back money from the Wife or to recapture it in the matrimonial property division. He further concluded that the Promissory Note put forward as evidence by the Husband (to substantiate that the Alleged Debt was incurred pre-separation) was an after the fact concoction.
16. The conclusions of the Trial Judge regarding the Husband’s attempt to substantiate the Alleged Debt appear to have been drawn both from his review and assessment of the accounting documentation tendered by the Husband at trial as well as by the evidence put forward by the Husband’s witnesses in that respect. On behalf of the Husband, there were 3 witnesses who addressed this issue (namely, the existence of the debt before the separation of Husband and Wife), the Husband himself, Mr. Terrigno and S.P., O. Ltd.’s bookkeeper.
17. The Trial Judge, on hearing the accounting evidence, concluded that the evidence presented regarding the Husband’s finances was not credible or reliable and defied logic.
18. The existence and substantiation of the Alleged Debt was also one of the central issues on the Husband’s Appeal of the Trial Decision. The Appeal Court was comprised of the Honourable Madame Justices Hunt and Paperny who provided the majority decision (the

“Majority” or the “Majority Decision”) and the Honourable Mr. Justice Slatter who provided a dissent, in part (the “Dissent” or the “Dissenting Decision”). **[Exhibit 7]**

19. Both the Majority and the Dissent prefaced their decision with comments about the nature and length of the trial which provides important context for the purposes of this proceeding:

(a) The Majority Decision at paragraph 3:

By way of context, we note that this highly contentious trial lasted 22 days and generated nearly 1900 pages of transcript. For the appeal, the parties together put forward nine binders of key evidence for our consideration. The husband’s lawyer acknowledged that the trial developed into a credibility contest and described one of the husband’s witnesses as having had a “petulant and irrelevant outburst” during his testimony: Transcript at pp. 1134, 1132.

(b) The Dissenting Decision at paragraphs 40 and 41:

The appellant husband’s financial situation is unorthodox and complex. During the marriage he was employed at O. Ltd., a restaurant owned by himself and his family. In addition to drawing a modest salary, he derived other financial benefits indirectly from the corporation that owned the restaurant. He lived in a house ostensibly owned by his mother, but the mortgage and some other expenses were paid through the restaurant, and the rental revenue from the house was attributed to him. All of his investments, income, expenses and business dealings were interconnected with those of his family, and a number of family corporations and trusts.

The litigation that resulted was complex. By the time the 22 day trial started, this short marriage had spawned 12 separate legal actions, about 35 court applications, and two appeals...The litigation was marked by the appellant’s failure or refusal to make full disclosure of his financial documentation. Some of the documents were only disclosed during trial, and then only in heavily redacted form. Financial documents were possibly created and backdated, causing the trial judge to conclude at para. 75 that they were a “fiction”, and that they were “an after the fact concocted fabrication designed to deny the Wife her share of matrimonial assets”.

20. The Husband’s Appeal dealt with numerous matters including the issues relating to and the Trial Judge’s findings in respect of the Alleged Debt. On this issue, the Appeal Court rendered a ruling based on a split decision.

21. The Dissenting Decision accepted many of the inferences drawn by the Trial Judge, including that many documents that might have been expected to show the debt, did not and that it was questionable that the Husband had signed back a significant sum of money he received for his interest in the restaurant without retiring any of his debt (paragraphs 103 and 100, respectively).

22. Ultimately the Dissenting Decision concluded that the Trial Judge made a palpable and overriding error in finding that the Alleged Debt was a fiction because he had referred to the date of the “purported loan agreement” (as it was referred to by the Trial Judge), which was in the form of a Promissory Note, as being July 16, 2007 when it was dated January 16, 2007, In particular, the Dissenting Justice stated that:

Counsel for the respondent fairly conceded that no witness testified the loan agreement had been backdated. The trial judge made no finding of fact that the document was backdated. The trial judge stated that the loan agreement was dated July 16, 2007, not that it was “prepared in July, and then backdated to January 16, 2007”. This error is critical, because it appears to undermine the inference that the document was created post-separation in order to affect the matrimonial property division. The trial judge effectively made a finding of fraud in the preparation of this document; in those circumstances precision in the findings is to be expected. (paragraph 106)

23. The Dissenting Justice also made note of difficulties with the record and the evidence on these issues as follows:

There are undoubtedly a number of problems with the record and the evidence surrounding the alleged debt to the restaurant. Some of the witnesses and some of the documents support the existence of the debt, while others tend the other way. The trial judge’s finding that it was a fiction reflects a palpable and overriding error, because he failed to notice that the loan documentation was apparently entered into prior to the separation, and he made no finding it was backdated. Whether and to what extent it is a legitimate debt is an open question that cannot be resolved on the this record. (paragraph 107)

24. On the issue of the Trial Judge’s findings of credibility and reliability, the Dissenting Justice had this to say (at paragraph 55):

In many respects the trial judge preferred the evidence of the respondent to that of the appellant husband and his family. The appellants complain that in some respects the respondent contradicted herself at trial. Determining the credibility of the witnesses is particularly within the mandate of the trial judge. A trial judge is entitled to believe some, all, or none of a witness's testimony. Just because there are flaws in the testimony of a particular witness does not preclude the trial judge from concluding that, overall, that witness is more reliable than the other witnesses. The basic findings of credibility made by the trial judge do not disclose any reviewable error.

25. The Majority Decision differed from the Dissenting Decision on the issue of the existence of the Alleged Debt. On this point they state (at paragraph 28):

We do not agree. We acknowledge that the trial judge once mentioned the wrong date for the agreement (July 16 instead of January 16). At the same time it is apparent that he realized the debt was supposedly incurred before February 28, 2007, since he specifically said so elsewhere in his judgment: para 75(v).

26. The Majority Decision reviewed the Trial Judge's reasons for concluding the Alleged Debt was a fiction noting, inter alia, the Trial Judge's findings regarding the reliability and credibility of the evidence of the Husband and Mr. Terrigno and concluded on the totality of the Trial Judge's reasons and bearing in mind the Husband's obligation to prove the existence of the Alleged Debt, the Trial Judge did not make a palpable and overriding error; rather, his "explanation for concluding the debt was a fiction was thorough and well-grounded in the evidence." (Paragraph 31).
27. Mr. Terrigno's role at the Trial was as a witness and not a party. He could not control what questions he was asked about the accounting documents that were tendered as evidence at Trial. Many of the O. Ltd. accounting documents tendered at trial by the Husband were offered in heavily redacted form and late in the litigation process. The Trial Judge did not accept either the Husband's testimony attempting to substantiate the Alleged Debt or Mr. Terrigno's. No effort was made by the Husband to adduce new evidence on appeal regarding the substantiation of the Alleged Debt other than as noted previously in respect of the incorrect date reference as it related to the Promissory Note.
28. This Hearing Committee has ruled that Mr. Terrigno can call evidence at this hearing which was not provided before the Trial Judge.

29. First, it is understood that a third party, a lawyer (currently, although not at the time) at Miller Thompson in Toronto, will provide evidence that she believes the Promissory Note was in fact executed on January 16, 2007 as a result of her having been the Commissioner on the Affidavit of Execution of witness S.P. in relation to the Promissory Note.
30. The second aspect of the new evidence derives from an independent chartered accountant who reviewed the unredacted versions of accounting schedules which had been exhibits provided in heavily redacted forms at Trial.

### **CONCLUSION AND ADMISSION**

31. Mr. Terrigno agrees and admits to all of the facts described above in paragraphs 1 to 30 and admits that all correspondence sent to him was received by him on or about the dates indicated, unless stated otherwise.
32. Having regard to the Citation against him, Mr. Terrigno admits guilt and that his conduct in giving evidence at the civil trial and the findings of the Trial Judge breached the *Code of Professional Conduct* and brought discredit to the profession.

This Agreement and Admission is dated the 19<sup>th</sup> day of February, 2014.

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WITNESS

“Mike Terrigno”\_\_\_\_\_  
MIKE TERRIGNO