

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
Michael Terrigno, Student At Law

REPORT OF THE HEARING COMMITTEE

On June 17 and 18, 2008, a Hearing Committee composed of Bradley G. Nemetz, Q.C., (Chair), Julia Turnbull, Q.C., and Ron Everard, Q.C., convened at the Law Society offices in Calgary to inquire into the conduct of Michael Terrigno. Mr. James Rooney, Q.C. appeared for Mr. Terrigno who was also present and Mr. Michael Penny appeared for the Law Society.

INTRODUCTION

[1] Mr. Terrigno was charged with misleading or attempting to mislead the Law Society with respect to his articles of a Student-At-Law. Mr. Terrigno received an MBA in 2003 and his LLB in 2006. He sought articles that would allow him to continue with his business practice which utilized the skills that he had learned during with his MBA studies. He realized that traditional articles to larger firms would not allow him to carry on with his business interests and he reached an arrangement with Mr. Gabor Zinner, a lawyer who acted for Mr. Terrigno's family and family companies, that Mr. Zinner would provide him with articles. Mr. Terrigno had previously worked as a summer student with Mr. Zinner. Mr. Terrigno and Mr. Zinner jointly purchased a building in north west Calgary for \$600,000. Mr. Zinner located his office on the second floor and, Mr. Terrigno located his office on the first floor.

[2] Mr. Terrigno and Mr. Zinner forwarded Articles of Clerkship to the Law Society during the late summer of 2006. Those articles were rejected by the Law Society on the basis that Mr. Zinner was not a suitable principal. Mr. Zinner had that decision reviewed by the Credentials and Education Committee, however, while that was pending Mr. Terrigno wished to have his articles commenced and, after a discussion with Mr. Anand Sara, a lawyer who practiced in association with Mr. Zinner, but out of different offices, Mr. Terrigno and Mr. Sara signed Articles of Clerkship on November 20, 2006, requesting that they be made effective November 17, 2006. These were forwarded to and accepted by the Law Society.

[3] However, Mr. Sara did not have office space for Mr. Terrigno. Mr. Terrigno had matters that he wanted to clean up. The committee found that the relationship of principal to student was not created and acted upon in November and December of 2006.

[4] On January 12, 2007 the Law Society called Mr. Terrigno at Mr. Sara's office. No one at Mr. Sara's office knew of Mr. Terrigno. An investigation ensued.

[5] The Hearing Committee found the student guilty of the citation, ordered a two months suspension, a reprimand, the payment of actual costs and the issuance of a Notice to the Profession. Counsel for Mr. Terrigno indicated that he might appeal and the suspension and the Notice to the Profession was stayed until 10 days following delivery of the written decision of the Committee.

JURISDICTION

[6] Jurisdiction was established by entering as exhibits the Letter of Appointment, Notice to Solicitor, Notice to Attend, Certificate of Status and Certificate of Exercise of Discretion. Further, Mr. Terrigno's counsel accepted the jurisdiction of the panel. The panel indicated that Mr. Everard had acted for Mr. Zinner and that Ms. Turnbull had issued a mandatory conduct advisory to Mr. Sara in connection with his role in these events. Mr. Nemetz indicated that he had been on the Conduct Committee Panel that had considered the issue of Mr. Zinner's suitability as a

PRIVATE HEARING

[7] No application was made to hold any portion of the hearing in private and the matter proceeded entirely as a public hearing.

OTHER PRELIMINARY MATTERS

[8] There were no other preliminary matters.

THE CITATION

[9] Mr. Terrigno was charged with the following citation:

IT IS ALLEGED that you misled or attempted to mislead the Law Society with respect to your articles as a student-at-law, and that such conduct is conduct deserving of sanction.

FACTS

[10] Mr. Terrigno is 33 years old and in July of 2006 applied for admission to the Law Society of Alberta as a student-at-law with Mr. Gabor Zinner as his principal.

[11] Mr. Terrigno received his undergraduate degree from the University of Calgary, his MBA from the University of Western Ontario, followed by his LLB, in 2006, from the University of Ottawa.

[12] Mr. Terrigno used his MBA training to provide business and financial advice. Mr. Zinner used Mr. Terrigno's services in connection with a real estate development in Quebec and with the possibility of investment in the growing business of ethanol as an alternative fuel. Also, Mr. Zinner was associated with Mr. Terrigno in business as a director of Easy Loan Corporation which was owned by Mr. Terrigno or Mr. Terrigno's family.

[13] Prior to 2006, when he proposed to commence his articles with Mr. Zinner, Mr. Terrigno had worked two summers in Mr. Zinner's office as a summer student. Additional connections between Mr. Zinner, Mr. Terrigno and Mr. Terrigno's family involved the fact that for a number of years Mr. Zinner had worked as a lawyer for the family and for companies owned or controlled by the Terrigno family.

[14] In October of 2006 Mr. Terrigno purchased property on Broadview Road N.W., in the City of Calgary for \$600,000. While title to this property was in his name, he had a co-ownership agreement with Mr. Zinner and they were equal owners.

[15] Mr. Zinner located his office to the second storey, Mr. Terrigno's office was on the ground floor and the basement was leased to a computer company.

[16] Mr. Terrigno's articles to Mr. Zinner came after he had interviewed with a number of firms. During interviews with some of those firms he asked whether he could work part-time at his business practice (apparently a day a week). It was obvious to him that his aspirations would not fit in with the expectation of the firms he was speaking with.

[17] Mr. Zinner had never had any partners, he had had articling students, and Mr. Sara was one such student who was admitted to the Bar in 1992. Mr. Sara and Mr. Zinner had

independent practices but practiced "in association". Mr. Sara established an office in north-east Calgary in 2001 and from that time on operated his office in the north-east, which was closer to his client base and his home. Mr. Zinner relocated his business from the downtown core to 17th Avenue S.W. in Calgary and then, with the acquisition of the building with Mr. Terrigno, located his office to the north-west premises.

[18] Mr. Zinner did not have keys to Mr. Sara's office, nor did Mr. Sara have keys to Mr. Zinner's office. There was no sharing of staff, offices, expenses or revenue. Indeed, letterhead used by Mr. Zinner in December of 2006 did not mention Mr. Sara, but listed Mr. Terrigno as a "student". Mr. Sara's letterhead continues to refer to Mr. Zinner using the name, "Zinner & Sara" with the disclaimer, "An Association of Independent Law Practices".

[19] By November 17, 2006 Mr. Zinner and Mr. Terrigno had learned that Mr. Zinner's application to be a principal had been rejected by the Law Society administration who took the view that he was unsuitable for that role. Mr. Zinner took steps to have the decision reversed by having a suitability hearing before a panel of the Credentials and Education Committee.

[20] It was clear that the determination of Mr. Zinner's suitability would take some time. In October of 2006 when Mr. Zinner asked for an adjournment of the suitability hearing so that he could present response evidence, Mr. Terrigno decided that he wanted to get on with his articles and to enroll in the upcoming CPLED course. In particular, Mr. Terrigno wished to take the session of that course which commenced in January 2007. He was told that his name was on a waiting list for that session and that priority was given to students who had already commenced articles. If he could not get into the January course he had to wait until the fall session.

[21] When Mr. Zinner's suitability of principal hearing was adjourned on October 23, 2006, a conversation took place between Mr. Terrigno and Ms. Angela Gallo-Dewar, a lawyer with the Law Society who had responsibility for credentials and education. Ms. Gallo-Dewar's recollection of that telephone conversation is recorded in the complaint (Exhibit 11, Tab 1), a memorandum of January 5, 2007, that was admitted into evidence by consent for the truth of its contents (except for expressions of opinion). That memorandum notes that Mr. Terrigno suggested that he could be articulated to Mr. Sara. Mr. Terrigno's evidence was that Ms. Gallo-Dewar suggested that he might articulate to Mr. Sara as a means of getting on with his articles while Mr. Zinner's suitability was being considered further on appeal.

[22] In our view nothing turns on who suggested that Mr. Terrigno could articulate to Mr. Sara. The issue is whether articles started and, if so, when.

[23] Messrs Zinner, Sara and Terrigno met at Zinner's and Terrigno's north-west office. Mr. Sara agreed to be Mr. Terrigno's principal. It was hoped that Mr. Zinner's appeal of the suitability decision would be successful and that Mr. Terrigno's articles could then be transferred back to Mr. Zinner.

[24] On November 20, 2006 Mr. Terrigno, from his north-west office, filled in, signed and faxed to Mr. Sara the Articles of Clerkship. Mr. Sara signed in the space provided for the principal's signature and faxed the document back to Mr. Terrigno who then forwarded it to the Law Society.

[25] The articles contain clause 4 which states,

"The Principal and Student propose that the articling term commence on _____. "

[26] Mr. Terrigno filled in the date of November 17, 2006 as the date proposed by the student and the principal for commencement of articles and Mr. Sara signed the articles. The articling term was for a period of one year.

[27] Mr. Sara testified that he agreed to be Mr. Terrigno's principal to help out until Mr. Zinner's application was decided. He understood that the articles were needed in part to allow Mr. Terrigno to obtain admission to the January CPLED course.

[28] While Mr. Sara knew Mr. Terrigno prior to November of 2006, the first meeting between them concerning articles occurred shortly before the execution of the articles. From that point until the Law Society commenced its investigation into Mr. Terrigno's articles there was one or perhaps two further meetings between Mr. Terrigno and Mr. Sara.

[29] Mr. Sara's evidence was that he and Mr. Terrigno had the one meeting before the articles were signed. From that time until at least January 15, 2007 Mr. Sara recalled meeting with Mr. Terrigno on one occasion for lunch over the Christmas break. Mr. Sara indicated that he was absent from the city over Christmas, coming into the office only periodically for real estate matters that needed attention.

[30] Mr. Terrigno suggested that there had been more meetings. He stated that he recalled going to Mr. Sara's office on one occasion and perhaps having lunch with him on two occasions.

[31] As Mr. Sara put it to the Law Society investigator, in his interview of May 4, 2007, "First, really it was the first few weeks of December that I sort of let it slide because it was again the holiday season, and he told me he was busy doing a few personal things but, beginning January and that exactly was my intention, that if he doesn't show up, there's absolutely no more leniency".

[32] The Law Society became suspicious and a series of events culminated in a meeting between Mr. Terrigno and a Law Society investigator on January 15, 2007.

[33] Mr. Terrigno's articles were accepted with a start date of November 17, 2006, the date put forward by Mr. Terrigno in the articles that he submitted to the Law Society. Mr. Terrigno was notified of the acceptance by an email to the address he was using, mike@zinner.ca. On November 22nd the Law Society staff called Mr. Terrigno at the number they had for him. Mr. Zinner's assistant answered the telephone and said that Mr. Terrigno was out but would call back.

[34] On December 5th the Law Society sent Mr. Terrigno material to Zinner & Sara at the north-east location, but received no response.

[35] On December 20th Mr. Zinner sent a letter to the Law Society enclosing documents concerning his suitability hearing and the Law Society noted that the letterhead was that of the "Zinner Law Office" and listed Mike Terrigno as a "student".

[36] Not having heard from Mr. Terrigno concerning the December 5th letter sent by the Law Society to Mr. Terrigno at Mr. Sara's office, Ms. Debra Lesley called Mr. Sara's office on January 2, 2007 and asked to speak with Mr. Terrigno. Mr. Sara was not present and no one at Mr. Sara's office recognized Mr. Terrigno's name or knew who he was.

[37] On January 5, 2007 Ms. Gallo-Dewar sent Ms. Whitburn (Manager, Complaints) a complaint against Mr. Terrigno expressing concern that Mr. Terrigno may have misled the Law Society. In that memo she recited the Law Society's efforts to contact him, set out above, and the

fact that the email address for Mr. Zinner was gabor@zinner.ca, for Mr. Terrigno it was mike@zinner.ca and for Mr. Sara it was zinersara@shaw.ca.

[38] On January 12, 2007 a Law Society investigator attended at Mr. Sara's office. The receptionist did not recognize Mr. Terrigno's name. Mr. Sara came out from his office and advised that Mr. Terrigno was attending educational courses. He told the investigator that he could not advise when Mr. Terrigno could be contacted at the Sara law office.

[39] On Monday January 15, 2007 Mr. Procyk, an investigator hired by the Law Society, attended at the north-west office of Mr. Terrigno and Mr. Zinner and attempted to question Mr. Terrigno concerning his articles. The investigator's memorandum of that meeting was admitted into evidence by consent (Exhibit 7) as to the truth of its contents although there was no admission concerning the investigator's impressions and opinions which Mr. Rooney stated Mr. Terrigno expressly rejected.

[40] The memo reveals that the investigator went to Mr. Terrigno's office, showed him the investigation order, took out a tape recorder and placed it on the table but did not turn it on. He then began to explain the purpose and direction of the interview and Mr. Terrigno asked if the interview was to be recorded. The investigator said that it was his practice to record interviews so that he had an accurate record of the questions and answers.

[41] Mr. Terrigno asked if the investigator had spoken with Mr. Sara and suggested that he should do so first. The investigator replied that this investigation was about Mr. Terrigno and not about Mr. Sara.

[42] Mr. Terrigno then said that he would take the matter up with the Law Society. The investigator asked if he would answer questions to which he replied that he would but not that day. The investigator reported that Mr. Terrigno said, "I will but not today, this is over, and not under these circumstances", that he also stated, "we both know what is happening here" and that "this isn't right".

[43] The next day the investigator wrote to Mr. Terrigno asking for the interview. Mr. Terrigno replied on January 18th saying, in part, that "I believe that the best course of action would be to allow the Law Society to review my submissions in response to the complaint and if an interview is still required we can discuss the process at that stage".

[44] Mr. Terrigno's subsequent (undated) response in writing to the Law Society concerning his complaint reads:

Re: Articles of Mike Terrigno

You have asked me to respond to a complainant raised by Angella Gallo Dewar in which it is claimed that I have misled the Law Society of Alberta.

As my complaint is related to the complaint filed against Mr. Anand Sara and Mr. Gabor Zinner, I believe that their response effectively replies to the complaint against me. I have read the responses of both my principal Mr. Sara and his colleague Mr. Zinner and in hopes of not repeating what they have already stated, I will adopt their response as my reply to the complaint. I would only add that in speaking with other articling students working in many different firms throughout Alberta, I am satisfied that my articling experience is consistent with what they report.

If any further information is required, please do not hesitate to contact me.

[45] The interview with Mr. Terrigno took place May 9, 2007 and other information was exchanged between Mr. Terrigno and the Law Society in connection with the complaint both prior to and subsequent to that interview.

[46] Turning to the evidence of interaction between Mr. Sara and Mr. Terrigno between the first meeting regarding articles and January 15, 2007, in addition to the meetings referred to above, there is evidence that Mr. Sara and Mr. Terrigno spoke on the telephone on a number of occasions. These contacts involved discussion of the terms and expectations concerning the articles, legal ethics, an Olds development that needed financing, Mr. Terrigno's defence of his relative, A.B., in a Provincial Court civil proceeding and some work Mr. Terrigno was doing on a Zinner criminal file.

[47] With respect to the Olds file Mr. Sara in his May 4, 2007 interview, stated, "there was a commercial file I was working on, and we discussed that, you know, what to do. How it was ...". Mr. Procyk: "Was he working on it?" Mr. Sara: "He was trying to help me, but no, because the file was not physically assigned to him yet. So ...". Mr. Procyk: "So, it wasn't a teaching-related thing?" Mr. Sara: "Not, not really, no".

[48] The situation with respect to the terms and circumstances under which the articles would be conducted presented challenges given the fact that Mr. Sara's office was less than 400 square feet, was divided between Mr. Sara's private office, a receptionist/secretarial area with only two work stations, and an associated waiting area for clients.

[49] It is unclear how they proposed to have Mr. Terrigno receive effective articles and supervision given these constraints. After January 15th the process was that Mr. Terrigno attended at Mr. Sara's office for four hours in the morning, took away files and assignments, did the work at his northwest office and returned the next day to Mr. Sara's office in the northeast. Mr. Terrigno stated that this was discussed during the first meeting before the articles were signed.

[50] The Committee is unable to decide whether the arrangement with respect to visiting back and forth between offices was in fact finalized prior to January 15th. It appears that there was also some discussion of the fact that there was a spare office that Mr. Sara could use in the north west office and that there had been, from time to time, discussion of Mr. Sara relocating. However, it is clear from the evidence that Mr. Sara's clients and practice was such that it was never seriously considered that he would relocate his practice to northwest Calgary away from his clients, his home, and the community and walk-in traffic that was a part of his practice. He was certainly not going to relocate his offices in any significant manner to the northwest solely to accommodate Mr. Terrigno's desire for articles.

[51] The Committee is satisfied and relies upon Mr. Sara's evidence that a relationship with Mr. Terrigno was meant as a stopgap measure pending resolution of Mr. Zinner's suitability, and that there was little or no discussion and agreement prior to January 15th on salary, days off, total time commitment, or how the articles would be carried out.

[52] There was also evidence that there was a dispute between Mr. Terrigno and Mr. Sara concerning the duties Mr. Terrigno would perform. As Mr. Terrigno stated, Mr. Sara expected him to do more administrative duties, file opening, taking messages, returning calls, and drafting letters, than Mr. Terrigno felt was appropriate for his background and experience. Indeed Mr. Terrigno's evidence at one point was that this was the sort of thing he did in high school.

[53] Mr. Terrigno told Mr. Sara he had work that he needed to clear up first before they got started on their working relationship. The impression that the Committee gained from all of the evidence is that Mr. Sara really did not expect to see Mr. Terrigno at his offices much before the completion of the first week of the CPLED course and, as Mr. Sara said, he wasn't really pressing Mr. Terrigno to get started.

[54] In a letter to the Law Society dated February 23, 2007, Mr. Terrigno asserted that "during the latter part of November a number of telephone, correspondence and face-to-face meetings took place in which Anand Sara indicated what he expected of me as his student and what I expected of him as principal". We find that at most one face-to-face meeting took place during November after the articles were signed and that, as Mr. Terrigno stated in his November letter, "I did not work on any files per se ...".

[55] Mr. Terrigno stated that in December he "began to take a cursory look at files of Mr. Sara including a financing file involving the mortgage of raw land located near Olds, Alberta". Mr. Sara says that he forwarded Mr. Terrigno a document seeking information concerning financing. The Committee concludes that Mr. Terrigno's actions concerning this matter were more from the business side and as a possible source of funding than as a student-at-law supervised by a principal in connection with a commercial transaction. Questioned about the details of the file, neither Mr. Sara nor Mr. Terrigno could provide any significant information showing what the legal work was that was being assigned to Mr. Terrigno during this period.

[56] Further, in Mr. Terrigno's letter of February 23, 2007, in which he was setting out to the Law Society the interactions with his principal, he also referred to a file that he was working on for A.B. who had been sued in Provincial Court Civil. While Mr. Sara appears to have opened a file in his office on that matter, he indicated that it was because his office had received a document from the Court. It appears to the Committee that Mr. Terrigno was working on this file for A.B. with little supervision until at least January 15, 2007.

[57] The letter of February 23, 2007 also refers to work done on Mr. Zinner's files. We find that this did not constitute meaningful supervision by Mr. Sara of Mr. Terrigno and is consistent with the working relationship he had with Mr. Zinner before the supposed commencement of articles between Mr. Sara and Mr. Terrigno. While nothing prevented Mr. Terrigno from working on a file referred to him by Mr. Zinner, the Law Society's decision that Mr. Zinner was not a suitable principal had the necessary implication that supervision by Mr. Zinner was not equated to or in proper substitution of supervision by Mr. Sara.

[58] The Committee also notes that Mr. Sara did not pay any of Mr. Terrigno's fees as an articling student, he did not pay Mr. Terrigno a salary, and there was no agreement on hours of work, holidays and the like. This is highly unusual if articles are in place.

[59] It appears that there was little if any remuneration of Mr. Terrigno by Mr. Sara during this period of time. Mr. Sara said that Mr. Terrigno would be paid basically on a fee splitting basis as most of Mr. Sara's work was not dependent upon the hours spent. Mr. Sara's evidence in that regard appears to be limited to what happened after January 15th. If he got a file in that Mr. Terrigno was to work on, he would indicate the total amount that he would be billing the client for the work and then he would allocate a certain percentage of that billing to Mr. Terrigno in conjunction with Mr. Terrigno doing a portion of the work on the file.

[60] The evidence that is before us with respect to billings is somewhat confusing. Following Mr. Terrigno's interview on May 15, 2007 he sent the Law Society a correction e-mail which reads: "Don i have spoken to Anand Sara and reviewed my banking information

and confirm that i have received 1 cheque from Anand Sara not about six as i mentioned in the interview. Just wanted to clarify this. Please include the correct information to the file."

[61] The billings seem to have been made through a management company associated with Mr. Terrigno.

[62] Mr. Terrigno said that Mr. Sara understood that he had an existing workload that he needed to clear up.

[63] He indicated that during this period of time he was working on the Olds files, A.B.'s Provincial Court matter, and his personal insurance matter. He indicated that most of the supervision under his articles came from mid-January onward and before that that he would call Mr. Sara for advice on matters.

[64] From January to May it appears that Mr. Sara gave Mr. Terrigno between 30 and 40 files that they worked on together. In May, following the Law Society's decision confirming that Mr. Zinner was unsuitable to be a principal, Mr. Sara ceased to be Mr. Terrigno's principal and Mr. Terrigno arranged to have articles with Mr. Souster, another sole practitioner, located his office in Mr. Souster's office and sold his half of the building to Mr. Zinner for a profit.

DECISION - GUILT

[65] Mr. Penny urged that the facts before us revealed a sham set of articles and constituted both misleading and attempting to mislead the Law Society.

[66] Mr. Rooney asked that the Committee regard the matter as an unfortunate series of events occurring over a short period of time (5 weeks) which included Christmas and the week of CPLED classes. He urged that primary responsibility should fall upon the principals not the student and that, while objectively there were grounds for the Law Society to be suspicious, when the complete facts and circumstances were known no misleading or attempt to mislead had taken place.

[67] The Committee was not satisfied on the evidence that it could conclude that Mr. Sara and Mr. Terrigno had no intention, until the Law Society became suspicious and started making inquiries in early January of 2007, of actually undertaking meaningfully supervised articles.

[68] In consideration of the evidence the Committee is mindful of the standard of proof which varies with the severity of the alleged conduct. While matters are not judged on the basis of beyond a reasonable doubt, the proof required on the balance of probabilities varies and when charges akin to fraud and deceit are alleged, the degree of proof within the general standard of the balance of probabilities is higher. The Alberta Court of Appeal in *Ringrose v. College of Physicians and Surgeons of Alberta*, [1978] 2 W.W.R. 534 (Alta. C.A.) considered the standard of proof in professional disciplinary matters. At pages 548 through 550 Clement J.A. either stated or quoted with approval the following propositions:

The burden of proof ... is to establish the guilt charged against a practitioner by a fair and reasonable preponderance of credible testimony, the tribunal of fact being entitled to act upon a balance of probabilities.

... The cogency of the evidence required to satisfy the burden of proof by a preponderance of probability may vary, however, according to the nature of the issue with respect to which that burden must be met.

... The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established.

[69] With respect to the circumstances surrounding the forwarding of the articles to the Law Society and what transpired in this supposed student/principal relationship from November 17, 2006 to January 15, 2007 we have concluded that the citations have been proven on the higher degree of probability appropriate to charges of deceit or misrepresentation and not the lower simple balance of probabilities. We find that there is clear and cogent evidence to support the finding of guilt in this case.

[70] When the articles were filled in by Mr. Terrigno on November 20, 2006 he inserted the date November 17, 2006 as the date "the principal and student proposed that the article term commence". This was a representation to the Law Society that an effective student/principal relationship existed from that day forward. It did not on that day. It did not on the day that they executed the articles being November 20, 2006 and forwarded them to the Law Society. All that had happened up to that date was a meeting where Mr. Sara agreed to become Mr. Terrigno's principal. Meetings and agreements to hire students do not create the principal/student relationship for the purpose of the commencement of the one year of articles required by the Law Society.

[71] It is significant to the Committee that the Articles of Clerkship filled in by Mr. Terrigno and signed by him and Mr. Sara begin with:

The principal and student agree as follows:

- 1 The Student is bound as a student at law to the Principal to serve the Principal continuously for the term of ONE YEAR from the date of the commencement of the articling term endorsed by the Executive Director (or authorized delegate) below ("the articling term").
- 2 The Student covenants with the Principal as follows:
 - (a) I will faithfully and to the best of my ability serve the Principal as a student-at-law in the profession of a barrister and solicitor throughout the articling term.
 - (b) I will obey and execute the lawful and reasonable requirements of the Principal and will not be absent from the service of the Principal at any time during the articling term with out the Principal's consent. I will at all times behave with diligence, honesty and propriety.
- 4 The Principal and the Student propose that the articling term commence on Nov. 17, 2006.

[72] The Law Society received and relied upon the information and accepted the articles on the basis that the term of the articles commenced on November 17, 2006. Mr. Terrigno therefore, absent the Law Society learning evidence to the contrary, was to be given credit for serving his articles from November 17th and the Law Society would have assumed that his term of articles would have ended one year from that date. Thus, he would have been eligible to be admitted to the bar on November 17, 2007.

[73] On November 20, 2006 Mr. Terrigno and Mr. Sara did not in fact act upon the articles as the Law Society is entitled to expect of a principal and a student. Mr. Terrigno continued in the northwest office virtually unsupervised by Mr. Sara, working on his own and Mr. Zinner's matters, including his winding down his affairs, spending time on his business matters and speaking from time to time with Mr. Sara. We are satisfied that Mr. Terrigno had no intention of undertaking what anyone would consider as appropriate work under supervision until at least the end of the first week of the CPLED course in January of 2007.

[74] The answers of Mr. Sara and Mr. Terrigno as to what in fact took place between them in the student/principal relationship between November 17th and January 15th are so vague that we conclude that little was occurring and that the articles were not intended to commence until the new year. In effect Mr. Terrigno obtained a commencement date for his articles, an articling status which granted him a more favourable status on the waiting list and permitted entry to the January CPLED course. He obtained this without the inconvenience of actually starting to work on his articles. He was instead focusing on his business interests and looking after his personal and family's legal problems rather than concentrating on the requirements of the articling experience.

[75] In making these findings, the Committee is also affected by the demeanor of Mr. Terrigno in cross-examination and his inability or refusal during the investigation process to produce records detailing the legal work he was doing, records of time spent, records of meetings with Mr. Sara, telephone calls or billings. If significant work had taken place during this time the Committee believes that Mr. Terrigno would have provided documentary support for his contention that real articles were in place and being acted upon.

SANCTION

[76] After the Hearing Committee delivered its conclusions on guilt and outlined the basic reasons for the finding of guilt, Mr. Penny asked that the sanctioning phase of the hearing be adjourned so that several developing matters that might relate to sanction could be concluded, specifically mentioning criminal charges for obstruction of justice against Mr. Terrigno where the case had been heard but the decision was reserved. Mention was also made of another pending disciplinary complaint. Mr. Rooney indicated that Mr. Terrigno wished to have the Committee proceed forthwith to the sanctioning phase.

[77] The Committee declined Mr. Penny's application for a significant adjournment and indicated that it would give Mr. Penny time to prepare for submissions on sanction but it was not prepared to grant a lengthy adjournment. It held that the matter should proceed on the basis of the current state of affairs that the Law Society could put before the Committee.

[78] After a brief adjournment Mr. Penny indicated that he was prepared to proceed with his submissions and tendered a certificate of Mr. Busch evidencing that Mr. Terrigno had no discipline record and also tendered an estimated Statement of Costs indicating costs of approximately \$3,000.

[79] Mr. Penny indicated that the Law Society provided Mr. Terrigno and his counsel prior notification that the Law Society considered the charges serious and that it might be seeking a lengthy suspension or termination of Mr. Terrigno's relationship with the Law Society depending upon the finding of the Hearing Committee.

[80] Mr. Penny then urged the Committee to terminate Mr. Terrigno from the Law Society, an effective disbarment, on the basis that Mr. Terrigno acted without integrity, was guilty of charges akin to deceit, had been promoting his own interests, and submitted that Mr. Terrigno's actions

[81] Mr. Penny then reviewed the general factors set out in Section 60 of the Hearing Guideline which includes the need to maintain the public's confidence in the integrity of the profession and its ability to govern, as well as specific in general deterrents, denunciation, rehabilitation, incapacity of the Member and avoiding undue disparity for sanctions imposed in other cases.

[82] Mr. Penny provided the Committee with the disciplinary case involving Ms. Bonnie Wald where she misled the Court, failed to advise her client that the client should obtain independent legal advice, and failing to remit funds to a client. The sanction for these acts was a suspension for 45 days. The Hearing Committee in that case noted that a suspension of greater than 45 days would have been appropriate for the misrepresentation but for the Member's "relative inexperience, and from confusion regarding her duties to the Court on the one hand, and her duties to maintain her clients' confidences on the other".

[83] Mr. Penny stated that the *Wald* case was not equivalent and stated that Mr. Terrigno, while a young lawyer at the start of his career, showed governability and integrity issues that warranted termination of his status with the Law Society or, at a minimum, a six-month suspension to properly address the issues of denunciation, specific deterrent, and the integrity of the legal profession.

[84] This Hearing Committee is not persuaded as to the comparability of the *Wald* case given, *inter alia*, the very different factual circumstances, the conflicting duties that Ms. Wald felt that she was facing, while Mr. Terrigno was not faced with any conflicts in duties and was pursuing his own interests.

[85] Mr. Rooney took strong exception to Mr. Penny's submissions on sanction. He stated that there was no evidence that Mr. Terrigno would pose a risk to the public. He suggested that part of the responsibility must rest with Mr. Terrigno's principals who suggested and conceived the course of action undertaken. With respect to the outstanding criminal charges, Mr. Rooney pointed out that Mr. Terrigno had already been subject to a good character hearing with respect to the charges before he was allowed to become an articling student. He mentioned that the outstanding conduct charge concerning Mr. Terrigno arose out of Mr. Terrigno's conduct helping A.B. during A.B.'s divorce and it was brought by A.B.'s wife.

[86] Mr. Rooney urged the Committee to consider that Mr. Terrigno had already been articling for much more than a year and that that this should be taken into account when considering sanction. He asked where the balance was in the Law Society's position when the Law Society decided not to charge Mr. Sara but ended that investigation with a Mandatory Conduct Advisory. Mr. Rooney suggested that six months' suspension was excessive and that a reprimand, costs and possibly a fine were appropriate bases to conclude the matter based upon the Committee's findings of guilt.

[87] The Committee was gravely concerned with Mr. Terrigno's actions as, first and foremost, they go to integrity and governability.

[88] Mr. Terrigno is not a young inexperienced candidate for admission to the Law Society. He has an MBA and a business background. He had an agenda for his articles and was not prepared to obtain traditional articles that his background and experience would have made

readily available. When the Law Society rejected Mr. Zinner as a suitable principal, Mr. Terrigno sought articles with Mr. Sara.

[89] Mr. Terrigno wanted credit for the commencement of articles without putting in the effort. He wanted credit for time not spent. He wanted credit which would allow him to advance up the CPLED waiting list. When confronted with the Law Society he was slow to recognize his obligation to respond and when he did respond, in writing, it was not with his version of the events but merely an adoption of the evidence of others. The practice of law and governance of the legal profession has at its foundation the integrity of a lawyer and the ability of the Law Society, clients and other members of the profession to rely upon that integrity and to assume that the lawyer is not lying or breaching the rules to further his own self-interest.

[90] Mr. Terrigno exhibited no remorse before the Committee and did not accept responsibility. He sought to blame others for his actions.

[91] Articles are the first and one of the most important aspects of a lawyer's interaction with the profession and the regulatory body. Articles require a great deal of good faith by the principal and the student towards the Law Society. Much of the CPLED course is now on-line and relies upon the integrity of the student to submit their own material. The Law Society is not in a position to monitor the working relationship between each student and each principal and determine whether or not that relationship is proceeding properly and whether a proper set of articles are being undertaken.

[92] The Committee concludes that a strong message must be sent to Mr. Terrigno, other students, members of the profession, and to the public that integrity is fundamental to being a member of this profession and that it is fundamental to this profession's ability to regulate its members.

[93] Mr. Terrigno needs a strong message as a specific deterrent. As a general deterrent other students and members need to know that misleading the Law Society will render them subject to a punishment that is meaningful in the circumstances of both the case and the member. The penalty must be sufficient to show the public that the Law Society takes governance and candour seriously.

[94] The Committee concludes that this case involves a high degree of self-interest and intent. Mr. Terrigno's statements to the investigator, as set out at paragraph 42 above, are striking in terms of attitude but are all the more revealing when coupled with other statements reported by the investigator, such as referring to the criminal charges against him as a "bull-crap charge". All of this suggests an attitude towards the Law Society and towards the justice system which is inimitable to practicing as a member of the profession.

[95] The Hearing Committee concluded that a two-months suspension, when taken in conjunction with the fact that Mr. Terrigno has received no credit for his articles with Mr. Sara, is required to impress upon Mr. Terrigno that his behaviour was wrong and that, if he does not change his attitude in a significant way, his future with the profession is in jeopardy. The Hearing Committee was mindful of the fact that this is a first offence and that Mr. Sara, for his involvement in the matter, was not charged. However, Mr. Sara is not before the Committee. This Committee is not in a position to guess what a hearing committee would have decided had Mr. Sara been charged. Issues of intent, self-interest, remorse would all have been relevant. However, the Hearing Committee, confronted with Mr. Terrigno, concludes that nothing short of a very strong statement, by way of suspension, would be appropriate to the conduct and attitude exhibited by Mr. Terrigno in this case.

[96] The Hearing Committee further ordered that Mr. Terrigno pay the actual costs of the hearing and that a Notice to the Profession issue.

CONCLUSION

[97] Following delivery of its decision on sanction Mr. Rooney requested that no notice to the profession issue as he was contemplating an appeal. After discussion the Committee decided that it would stay the suspension and the notice to the profession within ten days after receipt by Mr. Rooney or Mr. Terrigno of the written decision. Failing an application to extend the stay the suspension will start on the 11th day after delivery of this decision and the Notice to the Profession will issue simultaneously with the commencement of the suspension.

[98] Mr. Rooney indicated that Mr. Terrigno did not need time to pay the costs and the Committee concluded that the costs are to be paid within 60 days of delivery by the Law Society of the final Statement of Costs to Mr. Rooney or Mr. Terrigno.

[99] This was a public hearing and the exhibits will be made available. The Committee does not believe that any clients' names were mentioned but if they were they are to be redacted. There is no need for referral to the Attorney General. Notice to the profession and commencement of the suspension will occur on the 11th day after the delivery of this decision to Mr. Terrigno or his counsel, barring an appeal and a successful application for a further stay of this decision.

Dated this 26th Day of June, 2008

Bradley G. Nemetz, Q.C. (Chair)

Julia Turnbull, Q.C.

Ron Everard, Q.C.

APPEAL OF DECISION

This hearing outcome was appealed. On June 22, 2009 a panel of Benchers overturned this conviction.

IN THE MATTER OF THE LEGAL PROFESSION ACT
AND IN THE MATTER OF A HEARING REGARDING THE CONDUCT OF
Michael Terrigno, Student at Law

REPORT OF THE HEARING COMMITTEE

A telephone conference application was held July 21, 2008 for an extension of the stay composed of Bradley G. Nemetz, Q.C., (Chair), Julia Turnbull, Q.C., and Ron Everard, Q.C.,. Mr. James Rooney, Q.C. appeared for Mr. Terrigno who was also present and Mr. Michael Penny appeared for the Law Society.

Mr. Rooney applied to extend the stay granted by the Hearing Committee at the close of the hearing. He advised that an appeal, both as to conviction and sanction, had been initiated and that transcripts of the hearing had been received.

Mr. Penny indicated that he was not objecting to the extension to the stay but wished certain conditions to apply.

After discussion of various conditions the committee concluded that the stay would be extended on the following conditions:

1. There would be no notice to the profession and the suspension would not take effect.
2. Mr. Terrigno would pursue his appeal with diligence.
3. Mr. Terrigno would co-operate in the pre-hearing process involving the appeal.
4. A pre-hearing conference respecting the appeal may be initiated by either the Law Society or Mr. Terrigno.
5. The stay is extended to the earlier of the conclusion of the appeal hearing (at which time the Appeals Committee can make a determination as to the extension of the stay), or January 31, 2009. Leave is hereby granted for either party to make an application to extend the stay beyond January 31, 2009 should the Appeal not have concluded by that date.
6. Mr. Terrigno is entitled to continue in his working relationship with Mr. Souster (basically a continuation of the duties and responsibilities of a principal and student), or establish a similar new relationship with an active member of the Law Society subject to the Law Society's approval of the substituted active member and approval of the working arrangement.

Dated at the City of Calgary, Province of Alberta this 21 day of July, 2008

Bradley G. Nemetz, Q.C.
Chair for the Hearing Committee