

In the Court of Appeal of Alberta

Citation: Terrigno v Weal, 2026 ABCA 300

Date: 20260917
Docket: 2501-0355AC
Registry: Calgary

Between:

Mike Terrigno

Appellant

- and -

Jonathan Weal, John Doe and Brad Celmainis

Respondents

The Court:

**The Honourable Justice Jolaine Antonio
The Honourable Justice Alice Woolley
The Honourable Justice Karan M. Shaner**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice O.P. Malik
Dated the 10th day of December, 2025
Filed on the 7th day of January, 2026
(2026 ABKB 139, Dockets: 2401-00282; 2401-05816)

Memorandum of Judgment

The Court:

[1] The appellant, Mike Terrigno, appeals a decision disqualifying Jonathan Denis and his law firm from acting as counsel of record in the two underlying actions on the basis that Mr. Denis is a likely witness in the proceedings.

[2] In the spring of 2024, the appellant filed statements of claim against the respondents Brad Celmainis and Jonathan Weal, alleging they had defamed him online. The allegedly defamatory statements attributed to Mr. Celmainis included that the appellant assaulted a woman at a “well-known steakhouse in downtown Calgary” and that he “hangs out with the ‘best people’”. The statements attributed to Mr. Weal similarly included that the appellant assaulted “a female in front of witnesses including a smirking @JonathanDenisAB” and was a “[f]riend of people who make racist videos”. An amendment subsequently removed the latter allegation.

[3] The respondents each filed statements of defence, pleading in part that if they published the alleged statements, they were true or constituted fair comment. They asserted the alleged statements reflected in part a video “purporting to show Jonathan Denis” and others “mocking Indigenous people”. Mr. Weal pleaded the statements attributed to him also related to a second video, taken at a steakhouse in Calgary, where the appellant “is seen calling the individual taking the video... a derogatory name and then slapping the phone out of her hand”. Mr. Celmainis also referred to the second video in his statement of defence. The appellant disputes the authenticity of both videos.

[4] The appellant retained Mr. Denis, initially on a limited scope basis, to act as his counsel in the underlying actions.

[5] The respondents applied to disqualify Mr. Denis and his law firm from continuing to act on the basis that Mr. Denis was in both videos and they intended to call him as a witness to authenticate the videos and to support their defences of justification and fair comment. They argued several of the purportedly defamatory statements accurately reflected the content depicted in the videos, and Mr. Denis had direct knowledge of their authenticity. The respondents contended that Mr. Denis could not continue to act because his role as a witness would conflict with his role as an independent officer of the court. The chambers judge granted the application, disqualifying Mr. Denis and his law firm from acting as counsel of record in the underlying actions: *Terrigno v Celmainis*, 2026 ABKB 139 at paras 32-37 [*Chambers Decision*]. The appellant appeals that decision.

[6] The ability of litigants to retain and continue with counsel of their choice is often labelled a “right”. It will be given significant weight, but is subject to some limits: *Michel v Lafrentz*, 1992

ABCA 311 at para 5; see also *MacDonald Estate v Martin*, [1990] 3 SCR 1235 at 1243 [*MacDonald Estate*]. Courts may be required to remove counsel from pending litigation to avoid the risk of improper use of confidential information, to avoid the potential for impaired representation, or to maintain the repute of the administration of justice: *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39 at paras 13, 61; see also *Alberta Union of Provincial Employees v United Nurses of Alberta, Local 168*, 2009 ABCA 33 at para 24; *MacDonald Estate* at 1245.

[7] Where a lawyer acts as both advocate and witness in the same matter, not only is there a potential conflict of interest between counsel and his client, there is also a potential conflict with counsel's role as officer of the court: *Odo v John Doe #1*, 2025 ABKB 608 at para 31 [*Odo*]; *Nova Oculus Canada Manufacturing ULC v Sather*, 2024 ABKB 517 at para 32; *Mazinani v Bindoo*, 2013 ONSC 4744 at para 60(v); *Young-Tangjerd v Calvary United Church*, [2006] OJ No 2161 (QL), 2006 CanLII 17946 at para 7 (ONSC); *Urquhart v Allen Estate*, 93 ACWS (3d) 753, [1999] OJ No 4816 (QL) (ONSCJ) at paras 27-28 [*Urquhart*]. "A distinction must be drawn between the role of counsel as an ... officer of the court and the role of a witness whose objectivity and credibility are subject to challenge": *Urquhart* at para 28. The public perception that a lawyer may undermine the truth-seeking function of the justice system in order to obtain an unjust advantage for his client would impermissibly damage the repute of the administration of justice: *R v Fox*, 2026 SCC 4 at para 154, O'Bonsawin J, concurring.

[8] The Law Society of Alberta's *Code of Conduct* prohibits a lawyer from testifying in a matter for which he appears as counsel, unless permitted by law or the courts, or unless the matter is purely formal or uncontroverted: rule 5.2-1. The commentary explains that a lawyer should not "put the lawyer's own credibility in issue". Although not binding on the courts, the *Code of Conduct* is an important statement of public policy, founded on sound principles: *Hudye Inc v Rosowsky*, 2022 ABCA 279 at para 36; *Stanfield v Low*, 2019 ABCA 83 at para 18; *Forward v Zurich Insurance Company*, 2002 ABCA 123 at para 6 [*Forward*]; *MacDonald Estate* at 1246.

[9] The decision to remove a lawyer is an exercise of discretion within the innate jurisdiction of the Court of King's Bench to control its processes, to uphold the integrity of the administration of justice, and to prevent abuse and potential abuse of those processes. Such a decision is owed deference on appeal: *Beacon Hill Service (2000) Limited v Esso Petroleum Canada*, 2012 ABCA 269 at paras 2, 4-5 [*Beacon Hill ABCA*].

[10] The appellant raises a number of arguments on appeal.

[11] First, he argues the chambers judge misinterpreted the applicable law. We disagree. The chambers judge correctly noted (*Chambers Decision* at para 32) that, when the concern is for the repute of the administration of justice, the proper consideration is whether a fair-minded reasonably informed member of the public would conclude that the proper administration of justice required the removal of the lawyer: *Hazelwood v Schlotter*, 2022 ABKB 739 at para 74; *Jiwani v Jiwani*, 2022 BCCA 451 at para 20; *Beacon Hill Service (2000) Limited v Esso Petroleum*

Canada, 2011 ABQB 138 at para 35, aff'd 2012 ABCA 269 [*Beacon Hill ABQB*]; *Karas et al v Her Majesty the Queen et al*, 2011 ONSC 5181 at para 26; see also *Forward* at para 6. He also recognized (*Chambers Decision* at para 28) that while a definitive finding that the lawyer will be called as a witness is not necessary, removal will only be justified where the lawyer is “likely” to be a witness; a mere possibility is insufficient: *Forward* at para 7; *Odo* at para 31.

[12] Second, the appellant argues the chambers judge’s conclusion that Mr. Denis is a “likely” witness was based on speculation and self-serving assertions by the respondents, as opposed to objective or realistic risk.

[13] It is common ground that Mr. Denis is depicted in both videos the respondents argue are relevant to their defence. He is featured prominently in one video, and at least one of the allegedly defamatory statements expressly references his appearance in the other video. The respondents repeatedly and consistently advised Mr. Denis of their intent to call him as a witness. It was reasonable for the chambers judge to conclude Mr. Denis would have first-hand knowledge of the videos’ authenticity: *Chambers Decision* at para 34.

[14] The appellant argues the authenticity of the videos is irrelevant. The chambers judge rejected this argument, holding the authenticity of the videos was a “central issue” because the respondents argue the videos establish the factual basis for at least some of the allegedly defamatory statements: *Chambers Decision* at para 34. The appellant argues other people would also have first-hand knowledge related to the authenticity of the videos, not just Mr. Denis, such that he need not be called as a witness. The chambers judge held the potential to call other witnesses did not preclude the respondents from calling Mr. Denis as a witness: *Chambers Decision* at para 33. The appellant has not established reviewable error in these context-sensitive conclusions.

[15] Third, the appellant submits Mr. Denis is not a likely witness because a prior judgment has already determined the inauthenticity of the videos. The appellant relies on a default judgement he obtained against a different defendant in a different action that states, “The videos depicted at <https://www.cbc.ca/player/play/2078183491976> are found to have been manipulated or otherwise edited and are not authentic”. Although the chambers judge accepted that one of the two videos at issue was the subject of the default judgment, he declined to hold that the default judgment was binding on the respondents. The appellant has not identified any reviewable error in this regard. There was no evidence or argument before the chambers judge addressing why the default judgment should apply. To the extent there was a determination regarding the authenticity of one of the videos in the other action, it was not made on the merits, and the respondents were not parties. The mutuality of parties required for issue estoppel is not present, and the appellant has not identified any concern with the integrity of the courts’ adjudicative functions engaging the doctrine of abuse of process: *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at paras 23, 32, 43-44.

[16] Fourth, the appellant argues the respondents’ disqualification application was merely tactical in nature. The chambers judge addressed this issue, finding he was “not satisfied” that “their motives are coloured by bad faith or strategic purpose”: *Chambers Decision* at para 34. It is not the role of this Court to re-weigh evidence on appeal.

[17] Fifth, the appellant submits that, even if the chambers judge did not err in removing Mr. Denis as counsel, there was no basis to disqualify his entire firm. However, Mr. Denis was both partner and founder of the firm in question. When the chambers judge asked counsel for the appellant whether Mr. Denis’ disqualification should extend to the firm, he responded, “Well, he is the firm”. In *Forward* at para 8, this Court endorsed the following passage from *Harvard Investments Ltd v Winnipeg (City)*, [1994] 6 WWR 127 at 137, 1994 CanLII 16691 (MBQB):

It is reasonable to begin with the proposition that all members of a firm are identified as one in the eyes of the law. One must expect and require all members of a law firm to be loyal to one another and have mutual respect. A counsel who appears in court is expected to serve the interests of his client, but must also exhibit reasonable objectivity in advancing the case for his client. The role of counsel, in my view, is compromised when a member of the advocate’s firm is called upon to testify for the client. Counsel is expected to be loyal to his firm member who is now a witness. How can counsel properly discharge his obligation as counsel if he is, in fact, honour bound to be loyal to a witness? How can counsel in such circumstances be expected to argue an issue of credibility with respect to the evidence of his firm member? Furthermore, the client may also ask whether the counsel’s loyalty to the witness surpasses his loyalty to the client’s interest.

[emphasis added]

See also *Harder v Sartorio*, 2020 ABQB 404 at para 18; *Beacon Hill ABQB* at para 15; *Beacon Hill ABCA* at para 7. While there have been instances where a lawyer was disqualified but their firm was not, we find no reviewable error in the chambers judge’s decision to disqualify Mr. Denis’ firm.

[18] During the appeal hearing, the appellant suggested various other potential remedies short of disqualification. Because these remedies appear to have been proposed for the first time on appeal, and because it is not clear whether some of them would have been legally available or factually realistic, we decline to consider these alternatives to disqualification.

[19] Finally, the appellant argues the reasons of the chambers judge were insufficient to explain why he and his law firm were disqualified. When reasons are alleged to be insufficient, the task of this Court is to “assess whether the reasons, read in context and as a whole, in light of the live issues at trial, explain what the trial judge decided and why they decided that way in a manner that permits effective appellate review”: *R v GF*, 2021 SCC 20 at para 69. In this case, when the

chambers judge's reasons are read in the context of the record and as a whole, the basis for his decision to remove Mr. Denis and his firm is sufficiently clear to allow the foregoing review.

[20] The appeal is dismissed.

[21] Rule 9.4(2)(c) is invoked, and the Court will prepare the resulting judgment.

Appeal heard on September 10, 2026

Memorandum filed at Calgary, Alberta
this 17th day of September, 2026

Antonio J.A.

Woolley J.A.

Shaner J.A.

Appearances:

Appellant M. Terrigno

M. Morin
for the Respondents, Jonathan Weal and Brad Celmainis

J. Doe (no appearance)