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Terrigno v Celmainis, 2026 ABKB 139

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Court of King's Bench of Alberta

Citation: Terrigno v Celmainis, 2026 ABKB 139

Date: 20251210
Docket: 2401 05816; 2401 00282
Registry: Calgary

Between:

Docket No: 2401 05816

Mike Terrigno

Plaintiff
(Respondent)

- and -

Brad Celmainis and John Doe

Defendants
(Applicants)

And Between:

Docket No: 2401 00282

Mike Terrigno

Plaintiff
(Respondent)

- and -

Jonathan Weal and John Doe

Defendants
(Applicants)

Decision of the Honourable Mr. Justice O.P. Malik

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I. Introduction

[1] In 2024, the Plaintiff, Mike Terrigno ("Terrigno"), filed separate lawsuits against Brad Celmainis ("Celmainis") in Action No. 2401-05816 (the "Celmainis Action") and Jonathan Weal ("Weal") in Action No. 2401-00282 (the "Weal Action") (Weal and Celmainis are referred to as the "Applicants" and the Celmainis Action and the Weal Action are referred to as the "Actions"). The lawsuits filed in the Actions stem from statements that the Applicants allegedly posted on social media and which Terrigno claims are defamatory.

[2] The Applicants are defending the lawsuits. They have brought two applications which I must decide:

(a) Should Terrigno's lawyer, Mr. Jonathan Denis and his firm, Guardian Law Group LLP, be disqualified from acting on Terrigno's behalf as counsel of record; and

(b) Should the Actions be consolidated.

[3] For the reasons that follow, I grant the disqualification application, and I dismiss the application for consolidation.

II. Disqualification

A. The Celmainis Action

[4] In his Statement of Claim, Terrigno lists the defamatory statements which he believes Celmainis published and/or re-posted online. These statements reference Terrigno defending (then) Calgary City Councillor Sean Chu, who faced accusations of assaulting an underage woman (later known to be Ms. Petzold) while serving as a member of the Calgary Police Service. There are other statements which allege that Terrigno assaulted Ms. Petzold during an encounter at Hy's Steakhouse and Bar (Hy's); that he was banned from Hy's due to what is described as his "blatant display of violence and misogyny"; and that he is a misogynist who assaults women and engages in offensive and violent conduct.

[5] At paragraph 8 of his Statement of Claim, Terrigno alleges that Celmainis posted photos and videos of him that were intentionally edited to give a false impression of what actually occurred. Terrigno goes on in paragraph 9 to claim that Celmainis further shared videos (the "Brocket Videos") that, as established by this Court in a related lawsuit filed in Action No. 2301-02801 (the "Petzold Action") and supported by sworn affidavits, were found by expert evidence to have been fabricated.[1]

1 In the Petzold Action, Terrigno initiated legal proceedings against Andrea Petzold, alleging that she had published defamatory statements about him. Ms. Petzold is identified as the individual who was purportedly the underage victim of Mr. Chu, and the same person whom Terrigno is accused of assaulting at Hy's. Ms. Petzold did not respond to the lawsuit and was noted in default. As a result, Terrigno was awarded a judgment of $70,000.00 in damages and $10,000.00 in costs during a morning Civil Chambers hearing. The Chambers Justice issued an Order, specifically stating at paragraph 7 that Ms. Petzold had manipulated the Brocket Videos and that they were not authentic.

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[6] In his Statement of Defence, Celmainis argues that the defamatory statements identified in Terrigno's Statement of Claim are "selectively edited excerpts" that do not accurately represent what he actually said. At paragraph 7, he maintains that his remarks involve issues of "public interest," which are depicted in the Brocket Videos, specifically:

> Whether a sitting City Councillor, Sean Chu, engaged in inappropriate sexual activities with [Ms. Petzold] while Chu was an active member of the Calgary Police Service and the subsequent naming and harassment of that victim on Twitter, and in the public, and
>
> The release on social media of various videos purporting to show Jonathan Denis K.C., the former Minister of Justice, Dan McLean, a sitting Calgary City Councillor, and Craig Chandler, or some or all of them, mocking Indigenous people (the "Brocket Videos").

[7] Celmainis acknowledges that Terrigno does not appear in the Brocket Videos. He admits that he re-tweeted videos posted by others which depict Terrigno physically striking out at Ms. Petzold and calling her a derogatory name at Hy's (the "Hy's Video")[2]. He asserts that to the extent that his posts contain allegations of fact, they are substantially true, and he pleads the defences of justification and fair comment.

[8] Terrigno filed a Reply to Celmainis' Statement of Defence. Terrigno refers to this Court's Order in the Petzold Action, asserting that the Brocket Videos have already been determined to be "deep fake" and/or manipulated, for which Ms. Petzold is facing criminal charges.

[9] In his Amended Statement of Claim, Terrigno withdrew his previous allegations against Celmainis regarding his alleged publication of the Brocket Videos. Instead, he narrowed his allegation concerning Celmainis's publication of manipulated video content solely with respect to the Hy's Video. Terrigno subsequently filed an Amended Amended Statement of Claim which further refines his allegation regarding Celmainis' publication of the manipulated Hy's Video.

B. The Weal Action

[10] In his Statement of Claim, Terrigno lists the defamatory statements attributable to Weal. These include statements which refer to Terrigno being "a friend of people who make racist videos", slapping Ms. Petzold across the face when she was at Hy's, and that Terrigno engages in generally offensive and assaultive behaviour towards women.

[11] Terrigno subsequently filed an Amended Statement of Claim, adding other defamatory statements which he says were published by Weal, including fictitious depictions of individuals purporting to appear in the Brocket Videos which, in the Petzold Action, were proven to have been "faked" and/or manipulated.

[12] In his Amended Amended Amended Statement of Defence, Weal denies that he published the statements but asserts that if he did, the statements and any inferences flowing from them are substantially true. He contends that his statements relate to what is depicted in the Brocket Videos

[2] While a Chambers Justice concluded that the Brocket Videos were manipulated in the Petzold Action (see footnote 1), no ruling has been made regarding the authenticity of the Hy's Video.

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and the Hy's Video (the "Videos"). Weal further alleges that the Amended Statement of Claim is a strategic measure designed "to intimidate Mr. Weal, and others, into silence and to stop criticism of Sean Chu and Jonathan Denis, and to stop the circulation of the Brocket Videos and the Hy's Video". Similar to Celmainis, Weal relies on the defences of justification and fair comment.

[13] During Weal's counsel's questioning of Terrigno in April 2024, Mr. Denis attended as an observer and confirmed on the record that he was retained on a limited scope basis and that he would recuse himself if Ms. Morin, the Applicants' lawyer, indicated that she would call Mr. Denis as a witness at trial:

> Mr. Denis — Just before we swear the witness, I just wanted to put a couple things on the record. I -- I am here not as counsel, but on a limited scope for this appearance only. If there – Ms. Morin was only advised this morning that I was acting in this process as a limited scope agent. And further, in that Ms. Morin and I have agreed that if at any time she advises me that I am to be witness to these proceedings for -- for whatever reason, I will recuse myself, and we will consider that matter resolved. Ms. Morin, are you in agreement of that?
>
> Ms. Morin — I'm in agreement.

[14] Mr. Denis has refused to recuse himself from representing Terrigno despite Ms. Morin writing to him in August 2024, advising that the Applicants intended to call him as a witness at trial.

C. The Disqualification Applications

[15] On September 17, 2024, the Applicants filed applications and supporting Affidavits ("Supporting Affidavits"), seeking to disqualify and remove Mr. Denis and his law firm, Guardian Law Group LLP, from acting as agent or becoming counsel of record for Terrigno. In December 2024, this Court permitted Mr. Denis to continue representing Terrigno until such time as this Court directs otherwise.

[16] The Applicants depose that several of the purportedly defamatory statements which Terrigno says they published accurately reflect or refer to the content depicted in the Videos. They assert that Mr. Denis is present in both of the Videos and that they intend to call Mr. Denis to authenticate them and to support their defences of justification and fair comment.

[17] In his Supporting Affidavit, Weal references to his evidence which he provided in his Reply to Terrigno's Notice to Admit Facts, focusing specifically on conversations he had with two individuals, Mr. Christopher Souster and Mr. Craig Chandler (Mr. Souster is a Calgary lawyer while Mr. Chandler appears in the Brocket Videos). Weal contends that his discussions with Mr. Souster and Mr. Chandler are relevant because they illustrate Mr. Denis' efforts to challenge the authenticity of the Videos. According to Weal, Mr. Souster called him and advised him that Mr. Denis had impersonated Terrigno during a threatening phone call to Weal, that Mr. Denis was actively trying to suppress the Brocket Videos, and that Mr. Denis claimed they were fabricated and was threatening legal action against anyone who claimed otherwise. With respect to Mr. Chandler, Weal deposes that Mr. Chandler advised him that Mr. Denis regards the Brocket Videos as his "party piece" and that Mr. Denis instructed him to assert that they were fake.

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[18] In a response Affidavit, Chandler contests Weal's evidence. He deposes that the Brocket Videos have been altered and are not genuine and he denies ever describing them as Mr. Denis' "party piece".

[19] Terrigno has cross-examined the Applicants on their Affidavits. The Applicants testified that they are acquainted with Ms. Petzold and that they have never met or spoken with Mr. Denis. They know that Mr. Denis and Terrigno are friends and that Mr. Denis has occasionally acted as Terrigno's lawyer. They confirmed that they intend to call Mr. Denis as a witness at trial to verify the authenticity of the Videos.

[20] In his responding Affidavits, Terrigno deposes that the Applicants and their counsel have thus far not requested that Mr. Denis testify at trial and have not inquired about what evidence Mr. Denis might provide. Terrigno says that he "specifically sought out and retained" Mr. Denis because of his "unique and specialized experience with online defamation and his extensive record of reported decisions in this field." He argues that the disqualification applications are being pursued for strategic reasons, to create delay and to compel him to hire a lawyer with less expertise in this area of law than Mr. Denis.

D. The Parties' Positions

[21] The Applicants advance two grounds in their disqualification applications: (1) that Mr. Denis cannot act as Terrigno's lawyer while being a witness; and (2) that he should be held to his promise to recuse himself after having been requested to do so.

[22] The Applicants assert that Mr. Denis appears in the Videos and has direct knowledge regarding their authenticity. They contend that allowing a lawyer to continue representing a client while being a likely witness jeopardises the lawyer's ability to remain objective and impartial: ***Stanfield v Low***, 2019 ABCA 83 at paras 16-22; ***RT v Alberta***, 2020 ABQB 655 at paras 32, 57-60; and ***Nova Oculus Canada Manufacturing ULC v Sather***, 2024 ABKB 517 at para 32.

[23] They say that they have established there is a "real basis" that Mr. Denis "can likely, or probably, provide material evidence": ***Graham v Ontario***, [2006] OJ No 763 (ON SC) at para 35, cited in ***Harder v Sartorio***, 2020 ABQB 404 at paras 34-35. They further say that the question I must answer is whether Mr. Denis' independence as a lawyer and officer of the Court would be compromised if he or his firm are allowed to act as counsel of record in a case where he is likely to be a witness: ***Nova Oculus*** at para 55.

[24] In ***Harder***, the Court outlined several factors to consider when deciding whether a lawyer should be disqualified: ***Harder*** at para 33, affirmed in ***Nova Oculus*** at para 55. These include: the stage of proceedings, the likelihood that the lawyer will testify as a witness, the good faith of the party seeking disqualification, the importance of the evidence, the effect on the party's right to choose their own counsel, the possibility of tainted evidence, and the relationship between the parties and the prospective witness.

[25] Since the outset of these applications, the Applicants and their counsel have consistently stated their intention to call Mr. Denis as a witness at trial, and they emphasize that it is highly likely they will have him testify. They plan to have him authenticate the content shown in the Videos, since doing so is relevant to their defences of justification (truth) and fair comment. It also goes to Mr. Denis' credibility at trial generally, particularly if Weal's version of what Mr. Chandler

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and Mr. Souster told him are found to be true and if the Videos are proved to be authentic. They note that Mr. Denis was informed of their intent to call him as a witness in the early stages of Terrigno having commenced the Actions and shortly after their present counsel was retained. The Applicants reject any suggestion of bad faith, and they argue that Mr. Denis's close personal connection to Terrigno, along with his public assertions that the Videos are fabricated[3], cast doubt on his ability to impartially discharge his responsibilities to the Court.

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[26] Additionally, the Applicants contend that this Court may refuse to permit a lawyer to represent a client where the interests of justice demand it, whether due to a conflict of interest or other reasons. The submit that the applicable test is whether a fair-minded and reasonably informed member of the public would conclude that the proper administration of justice necessitates the lawyer's removal: ***Everingham v Ontario***, 1992 CanLII 7681 (ONSC), referenced in ***Beacon Hill Service (2000) Limited v Esso Petroleum Canada***, 2011 ABQB 138 at para 35. The Applicants maintain that Mr. Denis' conflict in respect of his dual roles as witness and as an independent officer of the Court cannot be cured. They note that Terrigno is a sophisticated litigant with adequate resources who, if he is unable or unwilling to represent himself, is capable of retaining suitably qualified alternative counsel. They emphasize that although Mr. Denis may be prohibited from acting as counsel of record for Terrigno, nothing prevents Terrigno from consulting with or seeking Mr. Denis' advice as a lawyer involved on the file, as distinct from appearing as counsel of record in Court: ***RT*** at paras 58-60.

[27] Finally, the Applicants insist that Mr. Denis should be held to this promise to recuse himself should the Applicants' counsel advise they would call him as a trial witness.

[28] Terrigno contends that the right of a litigant to select their own legal counsel is a fundamental principle protected by the Courts, and that disqualifying a lawyer is an exceptional measure reserved for the most clear-cut cases: ***Victoria and District Cricket Association v West Coast Cricket Organization***, 2024 BCSC 65 at paras 97 and 102. He further maintains that the mere possibility that a lawyer might be called as a witness is not sufficient for disqualification. Instead, there must be an objective likelihood that the lawyer will be required to testify: ***R v Karmis***, 2008 ABQB 525 at para 37. However, one of the authorities in his brief, our Court of Appeal has written that while the threshold for removing a lawyer "on the basis of a mere possibility" that counsel will be called to testify is insufficient, there need not be a "definitive finding" that the lawyer will be called as a witness - what is required, is that the lawyer will be a "likely" witness: ***Forward v Zurich Insurance Co***, 2002 ABCA 123 at para 7.

[29] Terrigno points out that in the Celmainis Action, the Amended Amended Statement of Claim does not reference the Brocket Videos and that in the Weal Action, this Court has already determined the Brocket Videos to have been manipulated. Consequently, Mr. Denis would only be required to testify about the incident at Hy's. He argues that rather than call Mr. Denis to authenticate the Hy's Video, the Applicants can just as easily authenticate it by calling Ms. Petzold, who filmed the incident, or any of the other people who witnessed what occurred.

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[3] During Weal's questioning, Mr. Denis stated, "I just want to put on the record that the authenticity of [the Hy's Video] is in dispute because the video was truncated. The full video shows a much different story. I'm just going to put that on the record here". During the same questioning, Mr. Denis stated that the authenticity of the Brocket Videos was "in dispute".

[30] In reference to the factors set out in paragraph 33 of ***Harder*** (discussed above at paragraph 24), Terrigno contends that since the Applicants brought forward their motions for disqualification, the litigation in the Actions has advanced significantly, with numerous applications being heard and questioning having been conducted. He asserts that the Applicants have not demonstrated a concrete intention to call Mr. Denis as a witness. Terrigno further contends that the Applicants are acting in bad faith and have brought these applications as a tactic to disrupt and delay the proceedings and to deprive him of his counsel of choice which will prejudice him given Mr. Denis' "rare expertise" in defamation law and his purportedly successful track record litigating similar high profile defamation cases.

[31] Regarding Mr. Denis' promise that he would recuse himself if requested to do so, Terrigno contends that the promise was made "to keep questioning going and move the matter forward", that it was made spontaneously "on the fly", and that it was never clarified or formally confirmed in writing. He asserts that the Applicants' counsel did not immediately attempt to enforce Mr. Denis' promise until they appeared in Court approximately four months later.

E. Discussion

[32] I appreciate that a client should only be deprived of their chosen counsel in narrowly defined circumstances. I acknowledge that the test for disqualification is whether a fair-minded and reasonably informed member of the public would conclude that the proper administration of justice necessitates the lawyer's removal. An important factor for me to consider in this case is the degree of likelihood that Mr. Denis will be called to testify.

[33] It is not disputed that Mr. Denis was present and observed the incidents depicted in the Videos. The Applicants argue that the Videos' authenticity is material and relevant because they form the basis for many of the statements which Terrigno alleges are defamatory, and they are germane to the Applicants' defences of justification (truth) and fair comment. I have not been provided with any authority that supports Terrigno's argument that they should be precluded from calling Mr. Denis to speak to the authenticity of the Videos just because there may be other witnesses who can provide similar evidence.

[34] I am satisfied that Mr. Denis is a witness who has first-hand, relevant and material knowledge regarding the events depicted in the Videos. It is not in dispute that the authenticity of the Hy's Video remains to be established. As for the Brocket Videos' authenticity, I have not heard an application as to whether this Court's decision in the Petzold Action, which found the Brocket Videos to have been manipulated, is binding on this Court in these Actions (on the basis of *res judicata*, for example). Consequently, the Applicants may find it necessary to call Mr. Denis to authenticate the Brocket Videos. In any event, given that the authenticity of what is depicted in the Videos is a central issue to the Applicants' defence, Mr. Denis' evidence is highly significant. The Applicants have satisfied me that they will likely call Mr. Denis as a witness and that their intention to do so is more than speculative. Terrigno has not satisfied me that their motives are coloured by bad faith or strategic purpose. Nor has he convinced me that there aren't other lawyers in Calgary who aren't as fully qualified to represent him as Mr. Denis. In short, I am not satisfied that Terrigno would be prejudiced were he to be deprived of Mr. Denis' representation as counsel of record.

[35] I find that a fair-minded and reasonably informed member of the public would conclude that Mr. Denis cannot act as both an impartial officer of the Court and as a material witness in the

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same matter in which he has a long-standing personal connection and professional relationship with one of the litigants. However, I am not aware of any bar that precludes Mr. Denis and Guardian Law Group LLP from continuing to assist Terrigno in a supportive role, in activities such as preparing pleadings, drafting legal briefs, and offering advice to the counsel of record: ***RT*** at paras 58–60. Permitting Mr. Denis and Guardian Law Group LLP to engage in these limited functions mitigates prejudice to Terrigno and is not opposed by the Applicants' counsel.

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[36] In light of my conclusion that there are adequate grounds to disqualify Mr. Denis and Guardian Law Group LLP from serving as counsel of record, it is unnecessary for me to address whether Mr. Denis should be bound by his promise to recuse himself. I note that there is no indication the Applicants or their counsel have suffered any detriment as a result of relying on Mr. Denis' promise and I am not convinced that a lawyer is not entitled to change his mind and rescind an oral promise given to the opposing party, particularly where the latter cannot show any resulting prejudice.

[37] In the result, I conclude that Mr. Denis is in a conflict and that he and Guardian Law Group LLP are disqualified from acting as counsel of record for the Applicants in these Actions.

III. Consolidation

A. The Parties' Positions

[38] The Applicants ask that I consolidate the Actions pursuant to section 7 of the *Defamation Act*, RSA 2000, c D-7 (the "*Act*") and rules 3.72 and 1.2 of the *Alberta Rules of Court*.

[39] Section 7 of the *Act* permits me "on an application by 2 or more defendants in 2 or more actions brought by the same person for the same or substantially the same defamation, [to] make an order for the consolidation of the actions so that they shall be tried together". Consolidation may also be available in accordance with rule 3.72(2) where "2 or more claims or actions (a) have a common question of law or fact, or (b) arise out of the same transaction or occurrence or series of transactions or occurrences". I am also mindful of foundational rule 1.2 which states that the purpose and intention of the *Rules* is "to provide a means by which claims can be fairly and justly resolved in or by a court process in a timely and cost-effective way".

[40] The Applicants contend that section 7 of the *Act* has not yet been judicially considered and therefore urge me to rely on the principles which underlie the Courts' approach to consolidation applications generally. These principles focus on promoting the efficient administration of justice, minimising the risk of contradictory judgments, and carefully weighing how my ruling on consolidation (one way or another) might affect the parties and the Court's limited resources, including administrative, judicial, and financial assets: ***Alliance Pipeline Limited v Universal Ensco Inc***, 2007 ABCA 285 at para 6, cited in ***Altex Energy v Meyer***, 2020 ABCA 368 at para 21. In considering whether to order consolidation, I am particularly cognizant of the need to protect the administration of justice and to conserve scarce judicial and related resources: ***Meyer v Altex Energy Ltd***, 2019 ABQB 787 at paragraph 16.

[41] After considering these principles, I must be satisfied that on balance, consolidating the actions serves the interests of justice: ***Altex*** (ABCA) at para 21. The Applicants submit that my assessment should include the following considerations: (a) the presence of common claims, disputes, and relationships among the parties; (b) the potential to conserve time and resources

during pretrial processes; (c) the likelihood of reducing the duration of the trial; (d) whether any party would suffer significant prejudice; (e) the comparative progress of each action; and (f) whether consolidation would cause delay in one action to the detriment of another party: ***Mikisew Cree First Nation v Canada***, (1998) 224 AR 157 (QB), referenced in ***Bank of Montreal v Valerio***, 2009 ABQB 578 at para 13; and ***Pricaspian Development Corporation v BG International Ltd***, 2016 ABQB 611 at para 99.

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[42] The Applicants contend that there is a clear connection between the Actions, as both involve the same causes of action based on similar statements published about Terrigno which relate to events portrayed in the same Videos. They argue that similar defences will be raised, common witnesses may be called, and a comprehensive assessment of damages will be required. The Applicants assert that consolidating the Actions will save time and resources by allowing them to conduct a single Part 5 questioning and that the significant overlap between the cases will help shorten the trial. They note that Terrigno has not provided any evidence opposing the consolidation application, nor is there any indication that he would be prejudiced if consolidation were granted. The Applicants argue that the Actions are at a comparable stage, with parties having exchanged Affidavits of Records. However, they acknowledge that while Part 5 questioning has begun in the Weal Action, it has not yet commenced in the Celmainis Action. They argue that since trial dates have not been set, consolidating the Actions at this stage will not cause any trial delays.

[43] Terrigno contends that the only similarity between the Actions is that both involve allegations of defamation and civil harassment. He maintains that the Applicants are independent parties, that there is no evidence of any conspiracy between them, and that both the content of the defamatory statements and their intended targets are distinct, in that Weal's statements concern Terrigno's business interests, whereas Celmainis' statements are directed at Terrigno personally and his family. Terrigno argues that the Actions do not involve common witnesses or overlapping factual circumstances. He says he is seeking a higher measure of damages against Celmainis, whom he says has continued with his campaign of defamation and harassment. He points out that the Weal Action is at a more advanced stage, as this Court has granted Terrigno permission to proceed with a summary judgment application on liability pending the outcome of my decision in this application.

B. Discussion

[44] While I take issue with several aspects of Terrigno's opposition to the consolidation application, I decline to order consolidation at this time, although in no way do I preclude the Applicants from bringing the same application at a later stage in these proceedings.

[45] As I understand it, Terrigno has already received permission to proceed with an application for summary judgment regarding liability in the Weal Action. I am not aware of any summary judgment/dismissal application being brought in the Celmainis Action, although this should come as no surprise since Part 5 questioning in that action has not yet commenced. I do not wish to delay Terrigno's summary judgment application in the Weal Action. The outcome of that application may be determinative to the liability issue in the Celmainis Action. Although there is considerable overlap in the issues, evidence, and parties involved in the Actions, I conclude that, because the Actions are progressing at different stages and the Weal Action has already been directed to proceed by way of summary judgment, consolidating the Actions at this point would not result in any meaningful saving of trial time.

[46] While I dismiss the Applicants' consolidation application at this time, I do not preclude the Applicants from renewing their application at a future time, should it be appropriate to do so.

IV. Disposition

[47] I grant the disqualification application. In the result, Mr. Denis and Guardian Law Group LLP are disqualified from acting as agent or from becoming counsel of record for Terrigno in the Actions.

[48] I dismiss the application for consolidation, although the Applicants have leave to bring a further consolidation application at a later date.

[49] While I recognize that each of the parties met with mixed success and that they may be responsible for bearing their own costs, I am prepared to consider their submissions on costs, which, should they choose to make them, must be received by no later than by January 7, 2026, limited to 5 pages plus the usual attachments.

Heard on October 24, 2025

Dated at the City of Calgary, Alberta on December 10, 2025.

O.P. Malik
J.C.K.B.A.

Appearances:

Monique Morin and Kerry Holmes,
for Brad Celmainis and Jonathan Weal

Mark D.J. Schulz
for Mike Terrigno

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