Court of King's Bench of Alberta

Citation: Terrigno v Celmainis, 2026 ABKB 205

Date: 20260318
Docket: 2401 05816; 2401 00282
Registry: Calgary

2026 ABKB 205 (CanLII)

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)

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

I. Introduction

[1] This costs decision follows my decision dated December 10, 2025, reported at ***Terrigno v Celmainis***, 2026 ABKB 139, in which I allowed the Defendants' application to disqualify Mr. Denis and Guardian Law Group LLP from acting as counsel of record for the Plaintiff, and I dismissed the Defendants' application for consolidation.

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II. The Parties' Submissions

[2] The parties acknowledge that success was divided. The Defendants argue that the Plaintiff should not receive costs for the consolidation application as he was self-represented and did not incur any legal fees aside from making oral submissions at the hearing. They submit that they should be awarded costs due to the Plaintiff's litigation conduct which they say resulted in unnecessary court appearances, and because of his abusive correspondence sent to them between October and December 2024.

[3] The Defendants say that each of them is entitled to costs of $4,710.00, calculated in accordance with Column 2, Schedule C, with a 4x multiplier for total fees of $18,840.00. They ask that these fees be increased by a further 10% to account for the Plaintiff's litigation conduct. Including disbursements, each Defendant asks for costs of approximately $22,000.00, which they say represents 50% of each of their actual costs (of approximately $40,000.00).

[4] The Plaintiff contends that he achieved greater overall success. He claims that he was ultimately successful with respect to the disqualification application because I found that Mr. Denis and his firm may still assist him with his litigation so long as they are not counsel of record. The Plaintiff argues that when outcome is divided, the Court should not attempt to allocate costs on an issue-by-issue basis and that the fair result is for each party to bear its own costs.

[5] The Plaintiff denies engaging in litigation misconduct. He says that the Defendants should have addressed their concerns regarding his conduct and correspondence during the three Case Conferences which the parties attended in February, March, and September 2025 (the "Case Conferences"). In any case, he argues that the Defendants cannot allege litigation misconduct without presenting sworn evidence. He says that the correspondence to which the Defendants refer is incomplete and taken out of context. He maintains that it is the Defendants' counsel who have acted unreasonably and he requests that I award him a lump sum of $1,500.00 in costs against each Defendant. He points out that the Defendants have not provided sufficient information for him to properly assess the reasonableness of their actual legal costs, and he argues that these costs proceedings should be adjourned to give him an opportunity to respond fully.

[6] Finally, the Plaintiff notes that he served two *Calderbank* offers on the Defendants: the first, dated October 14, 2025 (the "October Offer"), in which he offered to pay each of them $100.00 to discontinue their actions and the second, dated December 21, 2025 (the "December Offer") in which he offered to pay each of them $250.00 as full and final settlement of costs.

III. Discussion

A. General Costs Principles

[7] The objective of a costs award is to provide the successful party with a reasonable level of indemnification. A successful party is entitled either to reasonable and proper costs, under r 10.31(1)(a), or to any other amount the court considers appropriate in the circumstances, as set out in r 10.31(1)(b). If the costs award is to be "the reasonable and proper costs that a party incurred" as provided for in r 10.31(1)(a), then the options with respect to making such costs award are enumerated in r 10.31(3): ***McAllister v Calgary (City)***, 2021 ABCA 25 at para 30. Typically, the quantum of costs should represent partial indemnification of the successful party within a range of 40-50% of the party's costs, *reasonably incurred*: ***Barkwell v McDonald***, 2023 ABCA 87 at para 58. Costs need not be based on Schedule C in the Rules of Court, but it is one of several available approaches a court may use "to achieve the outcome of reasonable and proper costs": ***McAllister*** at para 29. In determining the quantum of costs, I must consider those factors enumerated in rule 10.33.

[8] The Court may deviate from "reasonable and proper costs" and may order such other amount it finds is appropriate in the circumstances, whether it be reduced costs or enhanced or elevated costs (***Uhugbulem v Balbi***, 2025 ABKB 318 at para 64, citing ***McAllister*** at para 31) due to the conduct of the parties, including some sort of litigation misconduct: ***Uhugbulem*** at para 66.

[9] The overriding consideration in fixing costs is to achieve proportionality in respect of the issues being litigated: ***Barkwell*** at para 57.

B. The Defendants' Substantial Success

[10] While I appreciate that the parties met with mixed success and that generally, costs are not apportioned on an issue-by-issue basis (***Mahe v Boulianne***, 2010 ABCA 74 at para 6), this does not mean, as the Plaintiff argues (citing ***Condominium Plan No. 8022962 v Malinkowski*** 2005 ABQB 346), that I should depart from the general rule that the party achieving *substantial* success is entitled to costs where appropriate: ***IFP Technologies (Canada) Inc v EnCana Midstream and Marketing***, 2024 ABCA 384 at para 98). Substantial success is determined objectively (***Herman v Delong***, 1999 ABQB 745 at para 17) and based on a "balanced assessment of the outcome and the nature of the final judgment": ***Kon Construction Ltd v Terranova Developments Ltd***, 2014 ABQB 655 at para 13, citing ***Mahe*** at para 6.

[11] I find that the Defendants achieved substantial success. The disqualification application was the primary issue at the hearing, taking up most of the parties' written and oral arguments, whereas the consolidation application played only a minor role. I reject the Plaintiff's assertion that he was partially successful on the disqualification application simply because Mr. Denis and his law firm may continue to assist him, as their continued involvement is allowed so long as their assistance is restricted: ***RT v Alberta***, 2020 ABQB 655 at paragraphs 58–60. Finally, the Defendants were not wholly unsuccessful with their consolidation application because I gave them permission to renew it in the future.

[12] Given the Defendants' overall success, I find it appropriate to award them costs. I decline to apply this Court's decision in ***Clarke v Syncrude Canada Ltd***, 2014 ABQB 430 which, at

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paragraph 47, concluded that "it is not a cost-effective use of this Court's time to dissect and analyze every issue and sub-issue with a view to apportioning costs". In my opinion, ***Clarke*** is distinguishable, as it involved a 16-day trial and litigation that was "extremely hard fought and the subject of extensive briefs, case law and the review of extensive documentation": para 47(4). In contrast, the present matter involved relatively straightforward applications which I was able to decide following a half-day hearing.

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C. The Defendants' Legal Fees and Disbursements

[13] I find the Defendants' claimed actual costs of approximately $40,000.00 to be entirely unreasonable and excessive for a half-day hearing, given that the Defendants' legal fees and disbursements are, to a significant extent, duplicative.

[14] I have reviewed the parties' proposed Bills of Costs. The parties do not disagree that costs should be assessed in accordance with Column 2. To account for the duplicative effect, I find that each of the Defendants is entitled to 75% of their column 2 costs in Schedule C: $2,025.00 for item 1(1), $1,000.00 for item 5(2), and $1,685.00 for item 8(1), for total Schedule C costs of $3,532.50. I have not applied a 25% inflationary gross up to these costs (as was done in ***Grimes v Governors of the University of Lethbridge***, 2023 ABKB 432 at paras 12-21; ***Merchant Law Group LLP v Bank of Montreal***, 2023 ABKB 597 at para 25; ***Distinct Real Estate USA 2, LP v Wazonek***, 2025 ABKB 451 at para 33) as no request was made for me to do so.

[15] The Defendants collectively seek photocopying costs of $974.25 to print 6,495 pages (at $0.15/page). I find the totals of pages printed to be excessive, and I reduce each of their photocopy costs to $150.00. Each of the Defendants may claim total taxable disbursements of $8.40 and total non-taxable disbursements of $96.00.

D. The Parties' Litigation Conduct

[16] This leaves me with the question whether I should adjust the Defendants' costs because of the Plaintiff's litigation conduct.

[17] I am not persuaded that either one of the parties engaged in litigation conduct that delayed the proceedings or resulted in unnecessary applications to the Court. Even if I find that any one of the parties' actions contributed to unnecessary delays and court appearances these are matters that should have been addressed during the Case Conferences. Consequently, I decline to adjust costs due to litigation misconduct.

E. The Plaintiff's Abusive Correspondence

[18] However, I am troubled by the Plaintiff's correspondence, which he does not deny he authored. Below are excerpts[1]:

> October 9, 2024: You are being dense about questionings...

[1] Corrected here and there for grammar and spelling.

> Are you still confused? Maybe an application under Rule 10.50 might help you get unconfused.
>
> October 9, 2024: I get it... you have provided your client with an untruthful excuse as to why costs were ordered against him, hoping that he might not understand that it was actually entirely due to your incompetence as to try and retain him as a client to preserve that revenue. Do not worry, my writ, and enforcement will help him understand that your incompetence caused his tribulation as will the double costs from his failure to accept my offer.
>
> October 10, 2024: It's the truth – she is an incompetent buffoon that should be washing dishes instead of practising law. She lies to her clients. She has misled the court, she has deeply insulted me and Jonathan on a number of occasions in these proceedings, and she has acted like a disgraceful fool in Court and in questioning.
>
> I am not going put up with her ignorance!
>
> It's only a matter of time before the Defendants realize that she is lying to them about their case. My prediction is that your firm will get sued or reported by them.
>
> October 10, 2024: Giving someone notice of enforcement on a judgment is called a courtesy not a threat you moron.
>
> I have an event at my home in Calgary when return. Maybe I can hire you to cleanup the place after the event. I hear you have a background in janitorial work.
>
> December 13, 2024: Sign the order I sent to you before your suspension starts, you laughingstock loser.
>
> December 17, 2024: I feel sorry for that student having a moron like you as a principal. So, she knows nothing about anything like you... so you are trying to tell me that she can sign an order then why didn't she? You idiot you come back now making up stories.

[19] I provided the Plaintiff an opportunity to clarify the content of his correspondence. He explains that there is significant animosity between himself and the Defendants and their counsel. The Plaintiff alleges that the Defendants have persistently engaged in online harassment, are responsible for delays, and have concealed or destroyed evidence. He claims the Defendants lied during questioning and that their counsel have mistreated him. For example, he notes that during questioning, counsel for the Defendants accused him of groping his testicles and playing with himself.

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[20] While I might empathize with the Plaintiff's frustration generally with how these proceedings have progressed, I find that the degree of hostility and invective he directs at opposing counsel is neither justified nor acceptable.

[21] The Plaintiff is a sophisticated litigant. Although he is not a member of the Law Society of Alberta ("Law Society"), he holds a law degree and has received formal legal training. A brief CANLII search shows that he engages in litigation before all levels of Courts in Alberta. While he is not a member of the Alberta Bar, his legal education and training would have apprised him of his obligation to behave professionally and to treat other litigants, counsel, and this Court with courtesy, respect, and decorum.

[22] I find that the Plaintiff's correspondence is unjustified and offensive. If the Plaintiff were a member of the Law Society, his behaviour would almost certainly violate the Law Society's *Code of Conduct* (the "*Code*") and be subject to sanction. Section 7.2-6 of the *Code* states:

> A lawyer must not, in the course of professional practise, send correspondence or otherwise communicate to a client, another lawyer or any other person in a manner that is abusive, offensive, or otherwise inconsistent with the proper tone of a professional communication from a lawyer.

[23] Sanctions for this type of behaviour might include a reprimand, a fine, and an order to pay costs: for examples, see ***Law Society of Alberta v Nguyen***, [2016] LSDD No 126 at para 13 where the lawyer was given a reprimand and ordered to pay costs of $3,000.00; ***Law Society of Alberta v Rauf***, [2022] LSDD No 19 at paras 3-4 where the lawyer was given a reprimand and was ordered to pay a fine of $2,000.00 and costs of $12,000.00; ***Law Society of Alberta v Andrawis***, [2024] LSDD No 58 where the lawyer was given a reprimand and ordered to pay costs of $2,750.00; ***Law Society of Alberta v Smith***, [2024] LSDD No 104 at paras 4 and 5 where the lawyer was given a reprimand, a fine of $5,000.00 and ordered to pay costs of $20,000.00; and ***Law Society of Alberta v Mercier***, [2025] LSDD No 260 at para 15 where the lawyer was given a reprimand, a fine of $5,000.00 and agreed to pay costs of $5,000.00.

[24] Ordinarily, I agree with the Plaintiff that the Defendants should have raised their objections to his correspondence during the Case Conferences. However, given the Plaintiff's legal sophistication, his frequent court appearances, his interactions with other parties and counsel, and the seriousness of his conduct, I find it necessary to address the costs implications of his behaviour. It is important to denounce and sanction such actions, particularly as this is not the first occasion on which the Courts have criticized his conduct.

[25] For instance, at paragraphs 25 and 26 of its decision in ***Terrigno v Litzius***, 2018 ABQB 602, this Court commented on the Plaintiff's communication style:

> [25] The Defendants say that Mike Terrigno's interest in prosecuting this claim against them is purely personal, vindictively so. It is clear from the evidence filed for this application that there is significant personal animosity between Mike Terrigno and the Defendants, although the basis for that level of animosity remains somewhat of a mystery to me.

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> [26] I was shown an email from Mike Terrigno to counsel for the Defendants that followed an aborted cross-examination of Antonietta Terrigno on her Affidavit. Suffice it to say that Mike Terrigno's language in that email can leave no doubt as to his willingness, if not his intention, to engage in improper and abusive communication of a type that would likely see a lawyer reported to the Law Society. Although Mike Terrigno advised in argument that he has a legal education, he is not a lawyer and is not bound by the Code of Professional Conduct.

[26] When the matter was appealed (***Terrigno v Litzius***, 2019 ABCA 100), the Alberta Court of Appeal, at paragraph 22 of its decision, specifically referenced correspondence which he sent to opposing counsel:

> [22] So you tell that little weasel client of yours (along with his brain dead, loser lawyer,[deleted] who thinks they can work together to lie and cheat to take advantage of my mother that I want full payment + costs of $5,000 on each judgment and that I will consider a very short payment plan failing which I will proceed to foreclose.

[27] While I acknowledge that the Plaintiff is not governed by the Law Society and is therefore not bound by a lawyer's professional obligations under the *Code*, this does not prevent the Court from expressing its disapproval of his conduct and determining what an appropriate amount of enhanced costs should be. Having considered the range of fines the Law Society might have imposed had the Plaintiff been a lawyer, I find it appropriate to award each Defendant an additional $2,500.00 in costs to address the Plaintiff's abusive correspondence.

F. Applying A Multiplier

[28] I recognize that a multiplier may be applied to a party's Schedule C costs in appropriate circumstances, such as where the action is particularly complex, the amount in dispute far exceeds the $1.5 million threshold for Column 5, or the conduct of a party justifies it: ***Stewart Estate v TAQA North Ltd***, 2016 ABCA 144 at para 25. However, I decline to do so here. This is because I have dismissed the Defendants' claim for enhanced costs related to the Plaintiff's litigation conduct and I have awarded the Defendants a measure of enhanced costs which accounts for the Plaintiff's abusive correspondence.

G. The Plaintiff's Informal Offers To Settle

[29] I conclude that the October Offer does not meet the essential features necessary for a *Calderbank* offer and is therefore inoperative because it was served on the Defendants a mere 10 days prior to the hearing and it lacks an expiry date. I am not satisfied that it represents a reasonable compromise or a genuine attempt at settlement: for requirements of *Calderbank* offers, see ***ILI's Painting Services Ltd v Homes by Bellia Inc***, 2020 ABQB 372 at paragraphs 19 – 27. Since the Defendants were successful in respect of this costs decision, the December Offer does not apply.

IV. Disposition

[30] In the result, I conclude that each of the Defendant's costs are as follows:

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(a) Schedule C costs of $3,532.50;

(b) Taxable disbursements of $8.40;

(c) Non-Taxable disbursements of $96.00;

(d) Photocopy charges of $150.00;

(e) Enhanced Costs of $2,500.00.

TOTAL COSTS of $6,286.90 + GST.

Dated at the City of Calgary, Alberta on March 18th, 2026.

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

Appearances:

Monique Morin,
for the Defendants

The Plaintiff, self-represented

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