

CITATION: Bahrami v. Jagtoo, 2026 ONSC 3110
COURT FILE NO.: CV-23-00706563-0000
DATE: 2026-05-26

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BAHRAMI v. JAGTOO et al
BEFORE: ASSOCIATE JUSTICE D. MICHAEL BROWN
HEARD: January 20, 2026 [by videoconference]
COUNSEL: M. Lauricella for the moving parties/defendants
N. Lewis for responding party/plaintiff

ENDORSEMENT

[1] The Defendants, James Jagtoo and Jagtoo & Jagtoo Professional Corporation (collectively “Jagtoo”), bring this motion to remove Michael Simaan and Kramer Simaan Dhillon LLP as the lawyers of record for the Plaintiff, Dr. Tahmoures Bahrami. The plaintiff opposes the motion. For the reasons that follow, the motion is granted.

Background

[2] The plaintiff and his registered medical practice retained Jagtoo to represent him in an underlying action against Tians Medical Services Inc. and others for damages for breach of contractual obligations and for various declarations and injunctive relief (the “Tians Action”). In the within action, the plaintiff claims damages against Jagtoo for alleged negligence in relation to Jagtoo’s legal representation of the plaintiff in the Tians Action.

[3] The plaintiff’s negligence claim centers around an urgent interlocutory injunction motion brought by the plaintiff in the Tians Action while represented by Jagtoo. In submissions on this motion, counsel for the plaintiff argues that the claim is narrowly focused on Jagtoo’s alleged failure to follow the plaintiff’s instructions on settling the injunction motion, given on November 15, 2022 approximately two weeks before the motion was heard. However, the negligence alleged in the statement of claim is broader than that and includes allegations that the defendants generally failed to exercise the skill and care to the standard of a reasonably competent solicitor. The plaintiff specifically pleads that Jagtoo should have recognized that the injunction motion was “no longer necessary” and “doomed to failure” following the October 25, 2022 scheduling endorsement of

Justice Myers at Civil Practice Court, rendered three weeks before the plaintiff provided Jagtoo with instructions on settling the injunction motion.

[4] The plaintiff ultimately lost the injunction motion and was ordered to pay costs of the motion to the Tians Action defendants in the amount \$40,830.97. The plaintiff pleads that as a result of the injunction motion loss and the associated costs order he was required to “give up” the Tians Action. The plaintiff eventually settled the Tians Action on the basis of a discontinuance of all claims in exchange for a reduction of the costs payable on the injunction motion to \$30,000. The plaintiff’s claim of \$50,000 in damages in this action includes the \$30,000 the plaintiff paid to the Tians Action defendants to settle that action.

[5] The plaintiff is represented in this action by Michael Simaan (“Simaan”) and Kramer Simaan Dhillon LLP (“KSD LLP”). Mr. Simaan became involved in the Tians Action on or about October 31, 2022 when the plaintiff sought a second opinion from him with respect to the Tians Action and the injunction motion in particular. The plaintiff received this advice from Simaan by email and in an in-person meeting at KSD LLP’s offices between October 31, 2022 and November 15, 2022. The second opinion received from Simaan culminated in the plaintiff’s instructions to Jagtoo on November 15, 2022 to settle the injunction motion. According to the plaintiff’s evidence, those settlement instructions were cut and paste from an email he received from Simaan. The plaintiff alleges that contrary to those instructions Jagtoo added additional terms to the settlement offer to the Tians Action defendants and that these additional terms rendered the offer unacceptable to the Tians defendants such that no settlement was reached.

[6] Simaan and KSD LLP became further engaged in the Tians Action following the dismissal of the injunction motion by Justice Sugusnari on April 28, 2023. On May 1, 2023, the plaintiff advised Jagtoo he would be seeking new legal representation in the Tians Action. On or about May 4, 2023, the plaintiff engaged Mr. Simaan and instructed him to try to negotiate a settlement of the Tians Action with the Tians defendants. On May 26, 2023, the plaintiff served a notice of change of Lawyer appointing Simaan and KSD LLP as lawyers of record in the Tians Action. On or about June 15, 2023, the plaintiff settled the Tians Action on the basis of a discontinuance of all of the plaintiffs claims in exchange for a reduction in the costs owing on the injunction motion to \$30,000. The plaintiff was represented throughout those settlement negotiations by Simaan and KSD LLP.

[7] The defendants move to remove Simaan and KSD LLP as the lawyers for the plaintiff in this action on the basis that Michael Simaan is a material witness whose evidence is relevant to the issues in this action. The defendants intend to call Michael Simaan as a witness at trial with respect to the second opinion advice he gave the plaintiff between October 31, 2022 November 15, 2022 and with respect to his retainer by the plaintiff in the Tians Action from May 4, 2023 to the settlement in June 2023.

Legal Framework

[8] Rule 5.2-1 of the Law Society of Ontario's *Rules of Professional Conduct* prohibits a lawyer who appears as an advocate from testifying or submitting their own affidavit evidence before a tribunal "unless permitted to do so by law, the tribunal, the rules of court or the rules of procedure of the tribunal, or the matter is purely formal or uncontroverted." Commentary under Rule 5.2-1 states: "The lawyer who is a necessary witness should testify and entrust the conduct of the case to another lawyer."

[9] Although the *Rules of Professional Conduct* are not binding on a court, they are a persuasive and important statement of public policy: *Mazinani v. Bindoo*, 2013 ONSC 4744 at para 60, citing *MacDonald Estate v. Martin*, 1990 CanLII 32 (SCC), at paras. 16 and 18

[10] When a lawyer in a proceeding appears as a witness in the same proceeding it gives rise to a conflict between the lawyer's obligations to their client and to the court. As explained by Gillesse J. (as she then was) in *Urquhart v. Allen Estate*, [1999] O.J. No. 4816 (S.C.J.):

When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. That conflict may be waived by the client, as indeed, was done in this case. The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system" (*Urquhart* at paras. 27 and 28; *Karas v. Ontario*, 2011 ONSC 5181 (CanLII), [2011] O.J. No. 3932 (Master) at para. 27).

[11] The court has inherent jurisdiction to remove a lawyer from the record who has a conflict of interest. The inherent jurisdiction stems from the fact that lawyers are officers of the court and their conduct in legal proceedings which may affect the administration of justice is subject to this supervisory jurisdiction: *Mazinani* at para 60, citing *MacDonald Estate* at para. 18.

[12] The test to be applied on a motion to remove a lawyer from the record who may be a witness is whether a fair-minded reasonably informed member of the public would conclude that the proper administration of justice requires the removal of the lawyer: *Mazinani* at para 60, citing *Karas v. Ontario*, 2011 ONSC 5181 at para. 26.

[13] The Divisional Court in *Essa (Township) v. Guergis; Membrey v. Hill*, 1993 CanLII 8756 held that the court should follow a flexible approach on a motion to remove a lawyer or law firm in circumstances where the lawyer might be called as a witness. Each case must be considered on its merits. The Divisional Court found that the following factors should be considered:

- i) the stage of the proceedings;
- ii) the likelihood that the witness will be called;

- iii) the good faith (or otherwise) of the party making the application;
- iv) the significance of the evidence to be led;
- v) the impact of removing counsel on the party's right to be represented by counsel of choice;
- vi) whether trial is by judge or jury;
- vii) the likelihood of a real conflict arising or that the evidence will be "tainted";
- viii) who will call the witness if, for example, there is a probability counsel will be in a position to cross-examine a favourable witness, a trial judge may rule to prevent that unfair advantage arising;
- ix) the connection or relationship between counsel, the prospective witness and the parties involved in the litigation.

[14] In this case, the defendant Jagtoo was the plaintiff's litigation counsel in the Tians action. Simaan and KSD LLP took over carriage of the file from Jagtoo, concluded the action through a negotiated settlement and then proceeded to commence this lawyer's negligence claim against Jagtoo. The moving defendants cite four different decisions of this court where the court removed the plaintiff's lawyer of record in a solicitor's negligence action due to the lawyer's involvement in the underlying litigation file that was the subject of the negligence claim: *8657181 Canada Inc. v. Mehdi Au LLP*, 2021 ONSC 1295; *1298781 Ontario Inc. et al. v. Levine et al.*, 2013 ONSC 2894 (Master); *Kitchen v. McMaster*, 2018 ONSC 3717 (Master); *P & J Contracting Inc. v Singer*, 2017 ONSC 3783 (CanLII) (Master). In each of these cases, the court came to its decision after considering and applying the *Essa* factors.

[15] In *8657181 Canada Inc.*, Justice Ferguson noted that lawyers who assumed carriage of litigation from another lawyer were routinely disqualified from acting in a solicitor's negligence action against the first lawyer:

[16] The Au defendants have provided case law supporting the proposition that in cases such as this one, where a lawyer assumes carriage of a matter, completes the proceeding, and subsequently initiates a solicitor's negligence action against a former lawyer, courts routinely disqualify the lawyer that assumed carriage from acting against the former lawyer. In my view, this is just common sense. (*8657181 Canada Inc.* at para 16)

The *Essa* factors

i) Stage of the proceedings

[16] The defendants commenced this motion in March 2025, about 18 months after this action was commenced, and shortly after the examinations for discovery where the defendants discovered the full extent of Simaan's involvement in Tians Action. Until the examinations for discovery, the defendants were unaware of Simaan's involvement in providing the second opinion to the plaintiff in the Tians Action in November 2022, or of the extent of his involvement in negotiating the settlement of the Tians Action. The motion was brought at an early stage in the proceedings and, in my view, as soon as it reasonably could have been brought, thereby minimizing any financial burden on the plaintiff arising from a removal order to the extent possible. This factor is more favourable to the moving defendants.

ii) The likelihood that the witness will be called

[17] Certainty that a lawyer will be called as a witness is not required for an order to disqualify. The moving party need only establish that there is a real basis to believe the lawyer can likely, or probably, provide material evidence: *Mazinani* at para 60, citing *Graham v. Ontario*, [2006] O.J. No. 763 (S.C.J.) at para. 35.

[18] The defendants intend to call Simaan as a witness if the plaintiff does not. The defendants submit that Simaan has material evidence to provide in relation his involvement with the plaintiff in providing the second opinion in October and November of 2022 and in relation to subsequent carriage of the Tians Action and the negotiation of the settlement. I agree.

[19] The essence of the plaintiff's claim in this action is that Jagtoo was negligent both with respect to the advice that was given and with respect to Jagtoo's alleged failure to follow instructions in the weeks leading up to the hearing of the injunction motion. The plaintiff admits that he was also receiving advice from Mr. Simaan during this same period of time. The plaintiff says he relied on Simaan's advice to instruct Jagtoo. The implication of the plaintiff's position is that the advice he was receiving from Simaan at the time was superior to the advice received from Jagtoo, which the plaintiff claims was negligent. The defendants are entitled to test the plaintiff's claims of the defendants' negligence leading up to the injunction motion hearing. Mr. Simaan will likely have material evidence in that regard, both with respect to the advice he gave to the plaintiff in the context of the second opinion and with respect to the facts and instructions he received from the plaintiff in giving that second opinion.

[20] The plaintiff's position is that he has produced the emails he received from Simaan in October and November of 2022 and that Simaan's evidence is not necessary in the circumstances. I disagree. The plaintiff also consulted with Mr. Simaan at an in-person meeting during that time and the discussions at that meeting are potentially material to the defendants' alleged negligence. Further, Simaan will likely have material evidence on the basis for the advice or proposed instructions contained in his emails to the plaintiff. I also disagree with the plaintiff that the defendants can obtain the evidence on the communications with Mr. Simaan from the plaintiff's own testimony. To the extent the communications between Simaan and the plaintiff are material, the defendants are entitled to the evidence from both parties to those communications.

[21] Simaan will also likely have material evidence from his involvement in the Tians action from the time he assumed carriage of the file until the conclusion of the action through the negotiated settlement, particularly with respect to mitigation and damages. The crux of the plaintiff's claim for damages is that but for the defendants' negligence he could have continued the Tians Action through to a determination on the merits and would not have been forced to prematurely settle the Tians Action by paying costs to the Tians defendants. The plaintiff's damages claim and the defendants' related allegation that the plaintiff failed to mitigate its damages puts at issue the reasonableness of the settlement achieved in the Tians action and whether it was the only or best available option to resolve the Tians action.

[22] The evidence is that Mr. Simaan recommended the settlement to the plaintiff negotiated the settlement with the Tians defendants. In an email to the lawyers for the Tians defendants, Simaan stated: "Our initial review of the file indicates that it will be a long, and complicated fight. Accordingly, rather than look at continuing the case, we would like to suggest to Dr. Bahrami that this dispute is not worth his time and effort and that he should consider walking away from the case on a without costs basis and the exchange of mutual releases." Mr. Simaan will very likely have material evidence on the settlement options that were available to the plaintiff at the time, on the impact of the defendants' alleged negligence on the plaintiff's negotiating position, and on the reasonableness of the settlement achieved.

[23] There is a real basis to believe Mr. Simaan can likely, or probably, provide evidence that is material to the matters at issue in this action. This factor favours the moving defendants.

iii) The good faith (or otherwise) of the party making the application

[24] The defendants raised the issue of Mr. Simaan's removal at the first reasonable opportunity. I have already found that there is good reason to believe that Mr. Simaan will have material evidence to provide. This motion was brought in good faith. The plaintiff has filed no evidence that would suggest otherwise. This factor favours the moving defendants.

iv) The significance of the evidence to be led

[25] As I have already found, it is likely that Mr. Simaan will have material evidence relating to the defendants' alleged negligence as well as to mitigation and damages. These are core issues in dispute in the action. The evidence to be led is of significant importance to the action. This factor favours the moving defendants.

v) The impact of removing counsel on the party's right to be represented by counsel of choice

[26] The plaintiff has filed no evidence that he would suffer any prejudice if Simaan and KSD LLP were removed as his lawyer of record. Given early stage of the action, there is no reason to believe that the prejudice would be significant. Absent any evidence from the plaintiff of actual prejudice, I find this factor only nominally favours the plaintiff's position.

vi) Whether trial is by judge or jury

[27] This action is brought under the simplified procedure and will therefore be tried by judge alone. This is a neutral factor.

vii) *The likelihood of a real conflict arising or that the evidence will be "tainted"*

[28] For the reasons given by Justice Gillese in *Urquhart*, Mr. Simaan's role as advocate cannot be reconciled with his role as a witness. It is likely that his dual roles will give rise to a conflict or that his evidence will be "tainted": *Karas et al. v. Her Majesty the Queen et al.*, 2011 ONSC 5181 at para 27; *Urquhart*, at para. 27. This factor favours the moving defendants.

viii) *Who will call the witness*

[29] The defendants intend to call Mr. Simaan. This would mean that Mr. Simaan would be subject to cross-examination by the plaintiff. Mr. Simaan cannot conduct his own cross-examination. It would also be inappropriate to have someone else from KSD LLP conduct cross-examination: *George S. Szeto Investments Ltd. v. Ott*, 2006 CanLII 9307 (ON SC) (Master) at para. 24; *Van Every (Litigation guardian of) v. Findlay*, 2025 ONSC 757 (Div. Ct.) at paras. 30-32.

(ix) *The connection or relationship between counsel, the prospective witness and the parties involved in the litigation*

[30] Mr. Simman is counsel for the plaintiff and a prospective witness for the defendants. These dual roles cannot be reconciled and he would be in a conflict of interest if he were to continue as counsel. It is in the interests of justice to prevent this conflict from arising: *8657181 Canada Inc.*, at para. 32; *Karas*, at para 49. This factor alone is sufficient for the removal of Mr. Simaan from the record.

Conclusion and disposition

[31] A review of the factors set out in *Essa (Township) v. Guergis* reveals that they overwhelmingly favour an order for removal. I find that a fair-minded reasonably informed member of the public would conclude that the proper administration of justice requires the removal of Simaan and KSD LLP as lawyers for the plaintiff. The defendants' motion is granted. Michael Simaan and Kramer Simaan Dhillon LLP shall be removed as the lawyers of record for the Plaintiff, Dr. Tahmoures Bahrami.

Costs

[32] As the defendants were successful on this motion they should have their costs. If the parties cannot agree on costs of the motion they may make submissions on costs in writing. The defendants shall serve (but not file) their costs submissions, not to exceed 5 pages, excluding any costs outline, by June 5, 2026. The plaintiff shall serve (but not file) his costs submissions, not to exceed 5 pages, excluding any costs outline, by June 12, 2026. Following the exchange of costs submissions the parties shall meet and confer in an effort to settle the issue of costs, failing which the parties shall file their costs submissions by sending them by email to my assistant trial

coordinator, Gobiga Amalakumar at Gobiga.Amalakumar@ontario.ca, by no later than June 26, 2026.

DATE: May 26, 2026

D. Michael Brown, Associate Judge