

SUPERIOR COURT OF JUSTICE – ONTARIO

7755 Hurontario Street, Brampton ON L6W 4T6

RE: Caretek Integrated Business Solutions Inc., Plaintiff

AND:

Shaila Bajwa, Defendant
Shaila Bajwa In Her Capacity As Estate Trustee For The Estate Of
Bikram Bajwa, Defendant

BEFORE: Justice E. Chozik

COUNSEL: Mark Klaiman (acting on behalf of Joel Levitt), for the Plaintiff
Shahzad Siddiqui, for the Defendant Shaila Bajwa

HEARD: June 17, 2026

ENDORSEMENT

Overview:

[1] The defendant, Shaila Bajwa (“Shaila”), brings a motion for an order removing Joel Levitt (“Levitt”) as counsel of record for the plaintiff, Caretek Integrated Business Solutions Inc. (“Caretek” or “Corporation”).

[2] The motion raises two questions: (i) does Levitt have a disqualifying conflict of interest arising from his prior solicitor-client relationship with Shaila, and (ii) is Levitt a likely material witness in this action.

[3] For the reasons that follow, the motion is allowed. I find that:

- a. Levitt previously acted for Shaila as her lawyer in connection with the 2022 trust agreement;

- b. He obtained confidential information that is directly relevant to the issues raised in this action, and
- c. He is also likely to be a material witness regarding Gulwant Bajwa's ("Gulwant") knowledge of the income splitting. I argue that this is the core of this action.

The public interest in preserving public confidence in the administration of justice outweighs Caretek's interest in retaining counsel of choice.

Background:

[4] Caretek was incorporated in 2008. Shaila's husband, Bikram Bajwa ("Bikram") held 2/3 of the shares in the Corporation and ran its day-to-day operations. His brother, Gulwant holds 1/3 of the shares and is self-described as the "silent investor". It is not disputed that Gulwant was not involved in the day-to-day running of the Corporation until after Bikram died on January 15, 2024.

[5] In August 2022, Levitt drafted a trust agreement under which Shaila held Bikram's shares in trust. Levitt met with Shaila, explained the agreement, witnessed her execution of it, and responded to her subsequent questions concerning both the agreement and her role as trustee.

[6] Correspondence filed on this motion shows that Shaila sought legal advice from Levitt concerning her responsibilities and potential exposure arising from her position as the trustee.

[7] In the present action, Caretek alleges that between 2012 and 2024 Shaila received approximately \$1.5 million from the Corporation while providing no services to it. It is also alleged that Shaila and Bikram conspired to defraud the Corporation. Punitive damages are sought against Bikram for breach of his

fiduciary duty. Shaila's defence is that the payments she received formed part of a longstanding income-splitting arrangement with Bikram.

[8] Levitt, who was clearly aware of the income splitting at least as of 2022, now represents the Corporation in this litigation against Shaila. Shaila is in effect its 2/3 shareholder by virtue of the trust agreement he drafted. She is also the sole beneficiary under Bikram's Will.

[9] There is no evidence on this motion about Levitt's authority to bring this action or represent the Corporation against its main shareholder. Leave of the court to bring a derivative action has not been sought.

The Law:

[10] It is against this backdrop that I must determine whether Levitt has a conflict of interest that precludes him from acting for the Corporation in this action and whether he should be removed as counsel because he is potentially a witness in the litigation.

[11] The jurisdiction to remove counsel of record flows from the fact that lawyers are officers of the court and their conduct in legal proceedings affects the administration of justice as a whole: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, at p.1245. This power does not depend on the rules of professional conduct made by various legal governing organizations and is not limited to cases where those rules are breached: *MacDonald Estate v. Martin*, at p. 1245; *Everingham v. Ontario* (1992), 8 O.R. (3d) 121 (Div. Ct.).

[12] Disqualifying a lawyer from representing a party is an extreme remedy. The highest level of restraint must be exercised before granting such a remedy: *Sacks v. Embury*, 2021 ONSC 2822, at para. 26. At the same time, a litigant's right to be represented by counsel of choice must yield to the paramount public interest in

preserving the integrity of the justice system, as well as its appearance: 781332 *Ontario Inc. v. Mortgage Insurance Co. of Canada* (1991), 5 O.R. (3d) 248 (Gen. Div.).

[13] In deciding whether to order counsel to be removed, the court must consider and balance the need to maintain high standards of the legal profession and the integrity of the justice system and the right to counsel of choice, which includes a litigant's right not to be deprived of his counsel without good cause: *MacDonald Estate v. Martin*, at p. 1243.

[14] On a motion to remove counsel for conflict of interest, the moving party has the initial burden to show that there existed a previous solicitor-client relationship related to the matter at hand. If this is established, then the court should infer that relevant confidential information was imparted unless the solicitor satisfies the court on an objective basis that no information was imparted which could be relevant: *MacDonald Estate v. Martin*, at p. 1260-1261; *MKD Security Awareness and Training Inc. v. Summerville*, 2008 CanLII 67903 (Ont. S.C.), at paras. 59-60.

[15] If the confidential information is relevant to the present action, then the risk of its misuse cannot be mitigated. A lawyer who has received relevant confidential information cannot act against his client or a former client – disqualification in those circumstances is automatic: *MacDonald Estate v. Martin*, at p. 1261.

[16] The test for removal of counsel due to conflict of interest is anchored in an overriding policy that the public, represented by the reasonably informed person, must be satisfied that no use of confidential information would occur. These rules in respect of conflicts of interests exist to preserve the confidentiality of information imparted to a solicitor by a client, and the confidence of the public in the integrity of the legal profession and in the administration of justice: *Ingarra v. Dye & Durham*

Limited, 2023 FC 1046, at para. 32; *Ingarra v. Dye*, at para. 32, citing *Kaiser (Re)*, 2011 ONCA 713, at para. 21.

Analysis:

Issue One: Does Levitt Have a Disqualifying Conflict of Interest?

[17] To determine whether Levitt has a disqualifying conflict of interest, I must determine the following:

- a. Was there a solicitor-client relationship between Levitt and Shaila?
- b. Did Levitt receive confidential information in the context of that relationship that is relevant to this action?
- c. Is there a risk that the confidential information Levitt received will be used to Shaila's prejudice?

[18] It is argued on Levitt's behalf that (a) Gurwal retained him to draft the trust agreement, and that Shaila was never his client; (b) that he only played an administrative role in the execution of the trust agreement; (c) that the information he received is irrelevant because the trust agreement is not an issue in this litigation; (d) that he did not receive any confidential information and that the risk of the misuse of any confidential information is non-existent.

[19] I do not accept these arguments.

A. Levitt Previously Acted for Shaila

[20] I find that a solicitor-client relationship existed between Levitt and Shaila.

[21] Although Levitt submits that he merely performed an administrative function, I do not accept this characterization of his role. He provided her with legal services, including legal advice.

[22] Under the Law Society of Ontario's *Rules of Professional Conduct*, a "client" is the person to whom the lawyer provides legal services, agrees to provide legal services to or with whom a person consults about a legal service and reasonably believes the lawyer agreed to help with their legal matter: s. 1.1.

[23] The client is not necessarily the person who pays for that legal service. A lawyer-client relationship can start without formality, a signed retainer agreement or payment of a retainer fee: *Rules of Professional Conduct*, s. 1.1, commentary 1.

[24] Levitt provided Shaila with legal services when he drafted the trust agreement and advised her about it before and after it was executed. In her correspondence, Shaila sought advice regarding potential liability, her responsibilities and exposure as trustee. Levitt provided her with legal advice on those issues.

[25] While Gulwant may have suggested or referred Shaila to Levitt, Gulwant did not receive the legal service: Shaila did.

[26] Shaila is therefore Levitt's former client.

B. Levitt Received Relevant Confidential Information

[27] I also find that Levitt received confidential information that is relevant to the issues raised in this action.

[28] Levitt knew about the income splitting arrangement between Birkam and Shaila and confirmed that Shaila was not involved in the running of the

Corporation. He was made privy to the circumstances that led to the trust agreement and Shaila's role and concerns about her position.

[29] This is the kind of information that a client could reasonably expect to have kept confidential. A client could reasonably expect that this kind of information would not be used against her in an action against her by the lawyer: *Chapters Inc. v. Davies, Ward & Beck LLP* (2001), 52 O.R. (3d) 566 (C.A.), at para. 30; *MKD*, at paras. 62-65.

[30] This information has a direct bearing in this action. Shaila's involvement in the day-to-day running of the business, and the income splitting arrangement between her and Bikram is relevant. Gulwant's knowledge of the income splitting arrangement, which he denies in the pleadings, is likely a pivotal issue in the action.

[31] The *Rules of Professional Conduct* prohibit lawyers from acting against former clients in the same matter, related matter or any other matter if the lawyer has relevant confidential information arising from the representation of the former client that may prejudice that client: *Rules of Professional Conduct*, s. 3.4-10.

[32] A lawyer who has relevant confidential information cannot act against his former client. Disqualification in those circumstances is automatic, unless the lawyer can satisfy the court that no relevant information was imparted: *MacDonald Estate v. Martin*, at p. 1261.

C. The Risk of Misuse Cannot Be Adequately Addressed

[33] Once it is established that the solicitor received relevant confidential information, disqualification follows. No assurances or undertaking not to use the information will be sufficient. In *MacDonald Estate v. Martin*, at p. 1261, Sopinka J. explained the reason for this as follows:

The lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere. Furthermore, there would be a danger that the lawyer would avoid use of information acquired legitimately because it might be perceived to have come from the client. This would prevent the lawyer from adequately representing the new client. Moreover, the former client would feel at a disadvantage. Questions put in cross-examination about personal matters, for example, would create the uneasy feeling that they had their genesis in the previous relationship.

[34] In my view, this is the situation here. Levitt has a conflict of interest in this action and must be disqualified from representing the Corporation in this action against Shaila.

Issue Two: Does Levitt Have Material Evidence to Give?

[35] A lawyer will be removed as counsel if the court determines that the lawyer is a necessary witness on an important issue in the case. As a general rule, a lawyer cannot “wear two hats” in a proceeding- one as counsel and one as a witness: *Hames v. Greenberg*, 2013 ONSC 4410, at para. 67.

[36] Having considered the stage of the proceedings, the likelihood that Levitt will be called as a witness, the significance of his evidence and the other factors set out in *Hames v. Greenberg* cited above, I find that Levitt is a necessary witness on a material issue in this case. He cannot also act as counsel for the corporation.

[37] Whether Gulwant knew of the income splitting arrangement before 2024 appears likely to be a significant issue in the litigation. Whether Bikram and Shaila acted with deceit or other dishonest means is also in question. Levitt’s involvement in drafting the trust agreement and his communications concerning the income splitting arrangement place him in a position to give direct evidence relevant to that issue.

[38] In particular, Levitt knew of the income splitting by Bikram as far back as at least 2022 if not earlier, whereas the Statement of Claim he prepared on behalf of the Corporation states that Gulwant did not know about the income splitting until 2024, after Bikram died and Gulwant took over the day-to-day running of the Corporation.

[39] Levitt's communication and relationship with Gulwant in respect of the income splitting arrangement is a pivotal issue in the action. Levitt's evidence may be necessary to contradict Gulwant's claims and to challenge his credibility in respect of his lack of knowledge of Bikram's income splitting arrangement with Shaila.

[40] Although Levitt submits that it is premature to decide whether he has material evidence to give and discoveries have not taken place, I find that there is more than a speculative possibility that Levitt will be called as a witness.

[41] I conclude that Levitt has material evidence to give on the key question in this action. He cannot continue acting for the Corporation for this reason.

Conclusion:

[42] For these reasons, the motion is allowed. Joel Levitt shall be removed as counsel of record for the Corporation in this action.

Costs of this Motion:

[43] The parties are urged to agree on the costs of this motion. If they are unable to do so, they may each make costs submissions, three pages maximum, double-spaced plus any Bills of Costs and Offers to Settle. The defendant shall serve and file those costs submissions not later than July 10, 2026. The plaintiff shall serve and file responding submissions not later than July 24, 2026.

Costs of the Motion to Appoint Litigation Administrator:

[44] Pursuant to the endorsement of Andre J. dated January 15, 2026, the parties may make written submissions in respect of the costs of the motion to appoint a litigation administrator and direct those submissions to me. They may each make costs submissions, three pages maximum, double-spaced plus any Bills of Costs and Offers to Settle. The defendant shall serve and file those costs submissions not later than July 10, 2026. The plaintiff shall serve and file responding submissions not later than July 24, 2026.

[45] No reply is permitted at this time.

Chozik J.

Released: June 30, 2026

CITATION: Caretek Integrated Business Solutions Inc v. Bajwa, 2026 ONSC3822
COURT FILE NO.: CV-24-3497-0000
DATE: 2026 06 30

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Plaintiff

AND:

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Shaila Bajwa In Her Capacity As Estate
Trustee For The Estate Of Bikram Bajwa,
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ENDORSEMENT

Chozik J.

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