

SUPREME COURT OF NOVA SCOTIA

Citation: *DLF Law Practice Incorporated v. McDonald*, 2026 NSSC 284

Date: 2026 08 31

Docket: PIC No. 525281

Registry: Pictou

Between:

DLF Law Practice Incorporated, a body corporate, and Donn Fraser

Plaintiffs

v.

Mary Jane McDonald, Eric Atkinson, SPI et Pomquet Inc.,
a body corporate, Jennifer Hamilton Upham, Kate Harris, Joel Sellers,
Julie MacPhee, Mary Jane Saunders, Dennis James, Gerald Green
and 3241964 Nova Scotia Limited (previously known as
CARM Legal Services Inc.), a body corporate,
and the legal partnership known as the firm Patterson Law

Defendants

And

Docket: PIC No. 521514

Registry: Pictou

Between:

Donn Fraser and DLF Law Practice Incorporated, a body corporate

Plaintiffs

v.

Julie MacPhee

Defendant

DECISION ON MOTION TO REMOVE COUNSEL

Judge: The Honourable Justice Scott C. Norton

Heard: July 24, 2026, at Halifax, Nova Scotia

Decision: August 31, 2026

Counsel: Donn Fraser, self-represented

DLF Law Practice Incorporated, on its own behalf by its Officer Donn
Fraser
Gavin Giles, KC, for the Respondents

By the Court:**Overview**

[1] The Plaintiffs move for an order removing and disqualifying Gavin Giles K.C., and his law firm, McInnes Cooper, as counsel of record for any defendant and declaring that McInnes Cooper can no longer act as counsel in these proceedings. The motion comes before me as case management judge for these proceedings.

[2] The parties to the proceeding represented by Mr. Giles are Julie MacPhee, Joel Sellers, Mary Jane Saunders, Eric Atkinson and his professional corporation SPI et Pomquet Inc., Kate Harris, Jennifer Hamilton Upham, Gerald Green and his professional corporation 3241964 Nova Scotia Limited (collectively “the McInnes Cooper Clients”). They oppose the motion.

[3] The underlying proceeding relates to claims by the Plaintiffs in Pic No. 525281, following dissolution of a law firm (colloquially referred to as Mac, Mac & Mac (“MMM”)), in which the plaintiff, Donn Fraser, was a partner (through his professional corporation DLF Law Practice Incorporated (“DLF”)). Several of the defendants, who were partners with DLF in MMM, subsequently joined the firm called Patterson Law. In summary, the Plaintiffs say that the dissolution was unlawfully orchestrated by the former MMM partners causing substantial loss and damages to the plaintiffs. The Plaintiffs claim against Patterson Law and certain of its partners for the tort of conspiracy, and accessory liability for assisting in fiduciary breach by the former MMM partners who subsequently became partners in Patterson Law.

[4] Pic No. 521514 is a claim in defamation by the Plaintiffs against Julie MacPhee. The claim relates to certain internal MMM communications that Ms. MacPhee authored about Mr. Fraser.

[5] The Plaintiffs’ motion is dismissed because, in summary, the allegations and complaints of the plaintiffs have not met the requirements of the legal authorities to justify the very serious remedy of removing counsel for the opposing party.

Preliminary Evidence Ruling

[6] Prior to the hearing of the motion, counsel for the respondents objected to the contents of the affidavit filed by the plaintiff, Donn Fraser, dated January 12, 2026.

I gave directions that the parties were to make their submissions in writing and I would consider the objections in advance of the hearing. Having received and considered their respective written submissions, at the commencement of the hearing of the motion I provided a bottom-line decision advising the parties of the paragraphs of the affidavit that would be given no weight, with reasons to follow in this written decision.

[7] I am mindful of and agree with the comments of Justice John Keith expressing the frustration of the court with extensive objections to affidavit evidence that allegedly does not meet the requirements of the *Rules* and the law of evidence that ought to be known to those who have been admitted to the bar, including Mr. Fraser: see *Colbourne Chrysler Dodge Ram Ltd. v. MacDonald*, 2023 NSSC 309, paras 25-32; *McKinnon v. Ocean View Manor Society*, 2025 NSSC 338, paras 7, 36 and 38.

[8] The law relating to the proper content of affidavit evidence is found in *Civil Procedure Rule* 39.04(1) and (2) and has been extensively canvassed in decisions of this court since *Waverly (Village) v. Nova Scotia (Minister of Municipal Affairs)*, 1993 NSSC 71. See, for example, *CNH Capital Canada Ltd. v. Canadian Imperial Bank of Commerce*, 2013 NSCA 35 (see: Paragraphs 81-82), *Layes v. Bowes*, 2021 NSCA 50 (see: Paragraphs 8-12), *Annapolis (County) v. E.A. Farren Limited*, 2021 NSSC 304 (see: Paragraph 7), *King v. Gary Shaw Alter Ego Trust*, 2020 NSSC 288 (see: Paragraph 9), and *Superport Marine Services Limited v. Balodis Incorporated*, 2021 NSSC 237 (see Paragraph 5).

[9] In summary, affidavits are prohibited from the deposition of irrelevant or immaterial information, unsourced hearsay, lay opinion, argument, or scandalous statements. As stated by Campbell J. in *College of Paramedics of Nova Scotia v. McCannel*, 2022 NSSC 109, at para:

Filing an affidavit is not just a litigant's chance to 'have their say'. A person does not get to raise everything that they think the judge should know, make a range of claims about the other side, or offer their opinion. An affidavit must be confined to information that is material and relevant. Material means that the information is about something that is in issue in the proceedings. Relevant means that the information or evidence makes the existence of a fact more or less likely. So, if something does not relate to the issues in dispute as much as a person wants to get it off their chest, it is not material and the evidence about it is not relevant.

[10] Considering the context of the motion before me, the Fraser Affidavit contains a substantial number of paragraphs of purported evidence that has nothing

whatsoever to do with the impugned conduct of Mr. Giles or his law firm, or otherwise relevant to the facts in issue on this motion.

[11] This motion is not concerned with whether any of the McInnes Cooper Clients are mentally ill or have been treated for any form of mental illness. It is equally not concerned with any form of criminality or other bad behaviour which is being alleged against any of the McInnes Cooper Clients. The competence or lack thereof of any of the McInnes Cooper Clients will not inform the outcome of the motion. It is about whether Mr. Giles, and the McInnes Cooper law firm more broadly, have conducted themselves in manners which will bring the administration of justice into disrepute. Stated another way, whatever the Plaintiffs might think about the McInnes Cooper Clients is not probative to the present motion.

[12] I have extended to Mr. Fraser's affidavit every conceivable benefit of the doubt. I will say generally, and despite cautions from this court and the Court of Appeal, Mr. Fraser seems unwilling or incapable of attesting to a matter of fact without adding unnecessary, offensive, and pejorative adjectives, adverbs, and comments. The clear intent is to embarrass the individual targets of these comments. Not only are these comments legally irrelevant and vexatious, but the extensive use of this vindictive language dilutes the persuasiveness of any factual content. In sum, it is extremely poor advocacy.

[13] Mr. Fraser's feelings, opinions, conclusions and inferences about alleged conduct by certain defendants are not probative of the issue before the court on this motion. Without limitation, these paragraphs variously allege, against the McInnes Cooper Clients, mental health issues and personality disorders, sharp legal practices, baseless and unsupported perspectives regarding professional competence, the leading of false information under oath, theft, dishonesty, conduct which is "shocking", offensive conduct, and misleading the police and the regulatory authorities.

[14] For the reasons expressed, I have given no weight to the contents of the Fraser Affidavit sworn January 12, 2026, contained in paragraph 11 (after the words "health issues" in line 3), paragraphs 33-36, 48-50, 61-64, and 73-90.

The Merits

[15] The legal principles that apply to the motion were considered by me in *DLF Law Practice Incorporated v. Atkinson et al.*, 2024 NSSC 206, at paras 5-9:

[5] The court possesses the inherent jurisdiction to remove or disqualify counsel for a conflict of interest. The Supreme Court of Canada has stated that this 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 supervisory jurisdiction: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, at para. 18.

[6] This motion involves the determination of competing interests: (1) the right of a party to select counsel of their choice; (2) maintaining the high standards of the legal profession and the integrity of the administration of justice; and (3) basic principles of fundamental fairness. An order for removal should not be made unless there are compelling reasons: *R. v. Speid*, (1983), 43 O.R. (2d) 596; *Brogan v. Bank of Montreal*, 2013 NSSC 76, at para. 35.

[7] The Supreme Court of Canada has said that the most important and compelling factor is the preservation of our system of justice: *Martin*, *supra*. At p. 1265, Justice Cory explained:

- The necessity of selecting new counsel will certainly be inconvenient, unsettling and worrisome to clients. ... However, the integrity of the judicial system is of such fundamental importance to our country and, indeed, to all free and democratic societies that it must be the predominant consideration in any balancing of these three factors.

[8] As to what will amount to compelling reasons, they must be such that would cause a fair-minded and reasonably informed member of the public to conclude that removal is necessary for the proper administration of justice: *Foley v. Victoria Hospital London Health Services Centre*, 2023 ONSC 4978, at para. 17.

[9] In *Brogan*, Associate Chief Justice Smith, as she then was, adopted the flexible and case specific approach taken in *Essa Township v. Guergis*, (1993) 15 O.R. (3d) 573. The following factors are to be considered:

- The stage of the proceedings;
- The likelihood that the witness will be called;
- The good faith (or otherwise) of the party making the application;
- The significance of the evidence to be led;
- The impact of removing counsel on the party's right to be represented by counsel of choice;
- Whether trial is by judge or jury;
- The likelihood of a real conflict arising or that the evidence will be "tainted";
- 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;

- The connection or relationship between counsel, the prospective witness and the parties involved in the litigation.

[16] A helpful summary of the principles was also provided by Justice Fryer in *S.B. v J.M.*, 2019 ONSC 6128 at paras 36 -43:

[36] A party's right to choose counsel to represent her in litigation is a fundamental value of our legal system. A litigant should not be deprived of her counsel of choice without good cause: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at para. 13.

[37] The courts in the exercise of their supervisory jurisdiction over the administration of justice in the courts have inherent jurisdiction to remove law firms from pending litigation. Disqualification may be required: (1) to avoid the risk of improper use of confidential information; (2) to avoid the risk of impaired representation; and/or (3) to maintain the repute of the administration of justice: *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, [2013] 2 S.C.R. 649 at para. 61.

[38] The court must exercise the "highest level of restraint before interfering with a party's choice of counsel": *Re Kaiser*, 2011 ONCA 713, [2011] O.J. No. 6223 at para. 21.

[39] Disqualification motions are brought pursuant to the inherent jurisdiction of the court, which is an "extraordinary power" to be exercised "sparingly": *Zaldin v. Zaldin*, 2014 ONSC 6504, [2014] O.J. No. 5355 at paras. 4, 5 and 10.

[40] The court must be alive to the fact that disqualification motions may be tactical and prone to abuse: *Corrado Di Rosa v. Edisoft Inc.*, 2012 ONSC 7240, [2012] O.J. No. 6169 at para. 17.

[41] The moving party bears the burden of demonstrating that counsel should be disqualified: *Zaldin* at para. 11.

[42] The responding party is not required to lead evidence on the motion: *Lautech Properties Inc. v. Barzel Windsor (1984) Inc.*, 2002 CanLII 7578 (Ont. SCJ) at paras. 18-20.

[43] The test is whether a fair-minded, reasonably informed member of the public would conclude that the removal of the law firm is necessary for the proper administration of justice. The factors to be balanced are (a) maintenance of respect for and the integrity of the high standards of the legal profession and the justice system as a whole; (b) the principle that a litigant has a right to choose her counsel, which should not be interfered with lightly; and (c) the objective of allowing reasonable mobility in the legal profession: *MacDonald* at para 57, *Zaldin* at para. 14 and *Leach v. Leach*, 2016 ONSC 6140, [2016] O.J. No. 5086 (Ont. S.C.J.), at para. 15.

[17] This is not a case wherein there is alleged a traditional conflict of interest wherein Mr. Giles or McInnes Cooper previously acted for the plaintiffs such that interests of confidentiality and loyalty arise.

[18] This is not a case where a lawyer is seeking to act on behalf of their law partner or on behalf of their spouse. There is no evidence that Mr. Giles has such a close relationship with any of the parties he represents that could adversely affect his judgment, his duty to provide objective, disinterested professional advice to his clients or, his duty as an officer of the court to be objective and detached. The evidence presented does not persuade me Mr. Giles, an experienced litigator and K.C., will not fulfill his duties as an officer of the court.

[19] The plaintiffs have also advanced the argument that Mr. Giles or one or more of his partners may be called as witnesses at hearings of disciplinary complaints against Mr. Fraser being prosecuted by the Nova Scotia Barristers' Society ("Society"). I have no evidence of what charges the Society is making against Mr. Fraser. I have no evidence as to what subjects Mr. Giles is to be questioned about. To my knowledge, the hearing has not been scheduled. The mere fact that Mr. Giles may be a compellable (allegedly adverse) witness at the disciplinary hearings does not meet the test for disqualification. Being subpoenaed by the Society to give evidence at a disciplinary hearing does not make Mr. Giles personally adverse to Mr. Fraser (see *Essa (Township)*, *supra*, at para 45). Further, Mr. Fraser advised the court at the hearing of the motion that a potential resolution had been reached with the Society, subject to approval by a hearing panel.

[20] The Plaintiffs further allege that Mr. Giles and McInnes Cooper have a vested interest in the outcome of these proceedings because two of Mr. Giles' partners played material roles in advising one or more of the McInnes Cooper Clients prior to these proceedings being commenced. With respect, many cases come before the court in which counsel for one or all the parties has given legal advice on strategy and tactics prior to the commencement of litigation. That alone is not a basis upon which a firm can or should be disqualified. The evidence does not meet the test for disqualification on this basis.

Conclusion

[21] In summary, the evidence before me on this motion does not meet the high threshold of compelling reasons that would cause a fair-minded and reasonably informed member of the public to conclude that removal is necessary for the proper

administration of justice. A party's choice of counsel should not be interfered with by the courts unless there is a compelling reason to do so. The remedy sought is reserved for extraordinary circumstances which do not exist here.

[22] The motion is dismissed.

[23] If the parties are unable to agree on costs, they will, on or before 2 weeks after receipt of this decision, provide the court with written submissions of no more than ten pages double spaced.

Norton, J.