

SUPREME COURT OF NOVA SCOTIA

Citation: *O'Neil v. O'Neil*, 2025 NSSC 353

Date: 20251106

Docket: SAT No. 543556

Registry: Antigonish

Between:

Raymond Gerard O'Neil

Applicant

v.

Adrian Ignatius O'Neil

Respondent

DECISION ON MOTION TO DISQUALIFY COUNSEL

Judge: The Honourable Justice Scott C. Norton

Heard: November 5, 2025, in Antigonish, Nova Scotia

Decision: November 6, 2025

Counsel: Justin E. Adams, for the Applicant
Adrian Ignatius O'Neil, self-represented Respondent

By the Court:

Introduction

[1] The Respondent, Adrian Ignatius O’Neil, brings this motion for an order to disqualify Justin E. Adams and the law firm Burchell Wickwire Bryson (“BWB”) from acting as counsel for the Applicant, Raymond Gerard O’Neil, in this proceeding. As the parties are brothers with the surname O’Neil, I will refer to them by their given names for clarity and out of no disrespect.

[2] The ground for the motion is that “there exists a reasonable apprehension of a conflict of interest” in the participation of Mr. Adams.

[3] This motion is brought in the context of an Application in Court filed by Raymond seeking an order requiring Adrian to account for the assets of the Estate of their late mother, Sarah Elizabeth O’Neil-DeCoste, which Adrian dealt with as attorney pursuant to a written power of attorney.

[4] The materials before the court consist of the following filings by the Respondent:

1. Notice of Motion filed August 5, 2025
2. Brief in support of Motion filed August 20, 2025
3. Affidavit of Adrian filed August 22, 2025
4. Book of Authorities filed August 22, 2025
5. Supplementary Affidavit of Adrian filed September 22, 2025
6. Supplementary Memorandum filed September 22, 2025
7. Chronology Affidavit of Adrian filed October 24, 2025
8. Reply/Rebuttal Memorandum filed October 24, 2025
9. Objection to Notice of Cross-Examination filed October 24, 2025.

[5] The Applicant did not file affidavit evidence in response to the motion but made the following filings on October 23, 2025:

1. Notice of Cross-Examination of Adrian filed October 23, 2025

2. Memorandum and Book of Authorities filed October 23, 2025.

[6] At the hearing of the motion, I dismissed the objection to cross-examination made by Adrian and permitted Mr. Adams to cross-examine him on subjects limited to the legal issues on this motion, as provided in *Civil Procedure Rule 23.09*. As Mr. Adams did not file an affidavit, Adrian was not permitted to cross-examine Mr. Adams as he had requested.

[7] The issue to be determined is whether this Court should order the removal of BWB as counsel for the Applicant.

[8] At the conclusion of the motion hearing, I dismissed the motion with reasons to follow. These are my reasons.

Background

[9] The Applicant and Respondent are brothers and sons of the late Sarah Elizabeth O’Neil-DeCoste (“Betty”). Their living siblings include Lawrence O’Neil, Mora Dowling, Cormac O’Neil, Dennis O’Neil, Sean O’Neil, Francis O’Neil, and Bernard O’Neil. Three siblings pre-deceased Betty and one, Gerald, died in May 2025.

[10] Betty died on April 5, 2023. Her will was probated on June 12, 2023, and appointed the Respondent as her executor. The Estate is represented by lawyer, Heather MacDonald, as proctor.

[11] On January 16, 2024, BWB wrote to Heather MacDonald on behalf of Lawrence O’Neil with respect to the probate proceeding. BWB ceased representing Lawrence in December 2024 and became co-counsel for the Applicant.

[12] During the relevant time both Lawrence and the Applicant made information requests including that the Respondent provide an informational accounting. The Respondent did not comply with those requests.

[13] On May 22, 2025, the Applicant filed a Notice of Application in Court seeking an accounting, including for an unknown period of time when the Respondent acted as attorney for Betty. The Respondent filed a Notice of Contest on May 29, 2025.

[14] On July 25, 2025, the Respondent filed a Notice of Application in Court naming the Applicant, the Applicant’s son, James, and siblings, Lawrence and

Moira, with respect to the transfer of the family home by Betty to the Applicant and James (Ant. No. 545329).

[15] In August 2025 the Respondent emailed the Applicant’s counsel alleging that BWB’s prior representation of Lawrence precluded BWB from acting for the Applicant in the present proceeding. The Applicant did not agree, and the present motion was filed on August 20, 2025.

Law and Analysis

[16] 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.

[17] The Nova Scotia Barristers’ Society *Code of Professional Conduct* requires lawyers to avoid conflicts of interest. The *Code* defines conflict of interest:

“conflict of interest” means the existence of a substantial risk that a lawyer’s loyalty to or representation of a client would be materially and adversely affected by the lawyer’s own interest or the lawyer’s duties to another client, a former client, or a third person.”

[18] The concept of a disqualifying conflict of interest was explained by Justice Hood in *Johnson v. Rudolph*, 2013 NSSC 210, at paras. 39-41:

[39] The Supreme Court of Canada considered the issue of disqualifying conflicts of interest in *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, [1990] S.C.J. No. 41. Sopinka J., for the majority, set out the pertinent questions as follows: “(1) Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?” (para. 48).

[40] Sopinka J. described the standard for determining whether confidential information was received in the following terms, at para. 49:

... In my opinion, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a difficult burden to discharge. Not only must the court's degree of satisfaction be such

that it would withstand the scrutiny of the reasonably informed member of the public that no such information passed, but the burden must be discharged without revealing the specifics of the privileged communication. Nonetheless, I am of the opinion that the door should not be shut completely on a solicitor who wishes to discharge this heavy burden.

[41] On the second question, “whether the confidential information will be misused”, Sopinka J. said, at para. 50:

The second question is whether the confidential information will be misused. A lawyer who has relevant confidential information cannot act against his client or former client. In such a case the disqualification is automatic. No assurances or undertakings not to use the information will avail. 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.

[19] The Nova Scotia Barristers’ Society *Code of Professional Conduct* states:

Duty to Avoid Conflicts of Interest

3.4-1 A lawyer must not act or continue to act for a client where there is a conflict of interest, except as permitted under this Code.

Commentary

[1] Lawyers have an ethical duty to avoid conflicts of interest. Some cases involving conflicts of interest will fall within the scope of the bright line rule as articulated by the Supreme Court of Canada. The bright line rule prohibits a lawyer or law firm from representing one client whose legal interests are directly adverse to the immediate legal interests of another client even if the matters are unrelated unless the clients consent. However, the bright line rule cannot be used to support tactical abuses and will not apply in cases where it is unreasonable for the client to expect that the lawyer or law firm will not act against it in unrelated matters.

...

Examples of areas where conflicts of interest may occur

[10] Conflicts of interest can arise in many different circumstances. The following examples are intended to provide illustrations of circumstances that may give rise to conflicts of interest. The examples are not exhaustive.

(a) A lawyer acts as an advocate in one matter against a person when the lawyer represents that person on some other matter.

...

[20] Adrian's affidavit evidence and legal submissions do not suggest that he ever had a client relationship with Mr. Adams or BWB. Rather, Adrian says that the conflict of interest arises from BWB's prior representation of another of his siblings, Lawrence O'Neil. Neither Lawrence nor Raymond, the two "clients" for whom Mr. Adams has acted, claim any conflict of interest. There is no basis in law to suggest that Adrian can use a lawyer's prior or current representation of another party as grounds for seeking disqualification.

[21] There is no allegation that BWB received confidential information from Adrian. As such there can be no duty on BWB to maintain confidentiality over any information received from Adrian.

[22] As no solicitor-client relationship ever existed between Adrian and BWB or Mr. Adams, Adrian's reference to judicial decisions that found a solicitor-client relationship are not helpful to him.

[23] Throughout the materials filed by Adrian he makes allegations and comments about Lawrence who is not a party to this proceeding. Those allegations have no relevance to the issue before me on this motion.

[24] Adrian contends that BWB's initial refusal to disclose to him their representation of Lawrence was improper. BWB owed no duty of candor to Adrian in these circumstances where nothing in the communication pertained to the fairness or transparency of legal proceedings. BWB in fact is obligated to safeguard a client's privilege.

[25] Adrian has further failed to establish that Mr. Adams is related to the parties or has any personal interest in the outcome of the proceeding.

[26] In summary, there are no grounds that warrant this court to exercise its' discretion to remove BWB as counsel. With respect, a reasonable and informed observer would perceive no risk to the fairness or integrity of the proceeding by allowing BWB and Mr. Adams to continue as counsel.

[27] The motion is dismissed. I will say that I accept Adrian is sincere in filing this motion because he believed (mistakenly) that he had grounds to object to Mr. Adams

continued representation. Nonetheless, Adrian filed extensive affidavit evidence and written submissions that Raymond had to respond to. Litigation is a costly business and a litigant who engages the court to seek a remedy and is unsuccessful, must recognize that the successful party will usually be entitled to costs. I order costs payable to Raymond by Adrian in the sum of \$1,000 payable forthwith and in any event of the cause.

[28] Mr. Adams will prepare an order accordingly.

Norton, J.