CITATION: Acenzia Inc. et al v. Perley-Robertson, Hill & McDougall LLP/S.R.L.et al, 2026 ONSC 130
COURT FILE NO.: CV-20-00637139-0000
DATE: 20260310

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	
ACENZIA INC., GRANT BOURDEAU, INDRAJIT SINHA, DERRICK BOURDEAU, AMBOUR HOLDINGS INC. and AVEC8 HOLDINGS INC. Plaintiffs	*Alex Flesias*, for the Plaintiffs
– and –	
PERLEY-ROBERTSON HILL & MCDOUGALL LLP/S.R.L., TIMOTHY J. MCCUNN, DIRK BOUWER and SEANN POLI Defendants	*Kirsten Crain* and *Paige Miltenburg*, for the Defendants – Perley-Robertson Hill & McDougall LLP/S.R.L., and Dick Bouwer
	HEARD: January 6, 2026

JUSTICE PAPAGEORGIOU

REASONS FOR DECISION

Overview

[1] Solicitor-client privilege is the cornerstone of our legal system. It is a substantial civil and legal right and principle of fundamental justice: *Roynat Capital v. Repeatseta Ltd.*, 2015 ONSC 1108, 125 O.R. (3d) 596 at para. 1, citing *Canada v. Solosky*, [1980] 1 S.C.R. 821; *R. v. McClure*, 2001 SCC 14, [2001] 1 S.C.R. 445; *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, 2002 SCC 61, [2002] 3 S.C.R. 209.

[2] However, there are limited circumstances where a party has put legal advice into issue and thereby is deemed to have waived the protection over any solicitor and client communications: *R. v. T.G.*, 2023 NLSC 36 at para 73; *Roynat* at para 1; *Si Iorio v MacNamera*, 2025 ONSC 429 at para 11.

[3] The defendant brings a motion to compel the plaintiffs to answer questions they say were improperly refused and to provide an answer to an outstanding undertaking. These questions relate to legal advice that the plaintiffs may have received from another lawyer about the matters at issue in this proceeding.

[4] The plaintiffs say that the questions need not be answered because the defendants are seeking to improperly obtain information that is protected by solicitor-client privilege.

Decision

[5] For the reasons that follow, I order that the plaintiffs answer the questions.

Issues

- Issue 1: Is the presence or absence of legal advice relevant to the existence or non-existence of the plaintiff's claim or the defendants' defence?

- Issue 2: Did the plaintiffs make the receipt of the legal advice from Mr. Beluli an issue in the claim or defence?

  Issue 3: Do the concepts of fairness and consistency require implied waiver in this case?

- Issue 4: Did the plaintiffs give an unqualified undertaking that must be answered?

Analysis

The Law on Waiver

[6] It is clear that the questions refused relate to matters that would be protected by solicitor-client privilege. The only issue is whether the plaintiffs have waived such privilege either explicitly or implicitly or whether there has been a deemed waiver.

[7] Explicit waiver is typically established when the holder of the privilege knows of the existence of the privilege and voluntarily demonstrates an intention to waive it: *British Columbia (Attorney General) v. Lee*, 2017 BCCA 219, 414 D.L.R. (4th) 635 at para. 53.

[8] In *Roynat*, the Divisional Court addressed implicit or deemed waiver when a party places his or her own state of mind in issue in the proceeding. It adapted the test from *Creative Career Systems Inc. v. Ontario*, 2012 ONSC 649, 213 A.C.W.S. (3d) 590, at para 30, and set out the following two-step test:

1) Is the presence or absence of legal advice relevant to the plaintiff's allegation of reliance?

2) Did the party who received the legal advice make the receipt of legal advice an issue in the claim? para 41.

Issue 1: Is the presence or absence of legal advice relevant to the existence or non-existence of the plaintiff's claim or the defendants' defence?

Description of the Action

[9] This action is brought by the plaintiff, Acenzia Inc., and its former shareholders (the "Former Acenzia Shareholders") against various lawyers at Perley-Robertson, Hill & McDouglall LLP (the "Lawyers") for solicitors' negligence and breach of fiduciary duties.

[10] The legal services relate to a share purchase agreement and related transactions, between Acenzia and a non-party, Eureka 93 Inc. ("E93"), (formerly called Livewell) whereby E93 purchased all of the issued and outstanding shares of Acenzia (the "SPI").

[11] After the SPI closed, E93 failed to make the payment required under the SPI.

[12] The plaintiffs allege that the Lawyers represented Acenzia, E93, and the Former Acenzia Shareholders, including in respect of the preparation and negotiation of a letter of intent ("LOI") and the SPI. They plead that the Lawyers breached fiduciary duties by acting on both sides of the transactions because of actual conflicts of interest. They plead that while the transactions contemplated by the LOI required payment of $2 million in cash on closing, up to $375,000 repayment of shareholder loans, the injection of working capital and the retention of the plaintiffs Mr. Bourdeau and Mr. Sinha's board seats, these agreements were altered in the SPI at the direction of E93, whose interests the Lawyers preferred.

[13] They also allege that the Lawyers failed to advise the Former Acenzia Shareholders to seek independent legal advice regarding the representation of their interests.

[14] The causes of action alleged are negligence and breach of fiduciary duty.

[15] The Lawyers deny there was ever any legal relationship or advice given to the Former Acenzia Shareholders and say they understood that the Former Acenzia Shareholders had retained their own personal lawyer, Mr. Beluli, to advise them in connection with the transaction.

[16] The LOI was signed on October 4, 2018.

[17] The Joint Engagement Letter, which did not include the Former Acenzia Shareholders, was signed on October 5, 2018.

[18] The SPI was signed on December 14, 2018.

Certain Specific Pleadings

[19] Apart from the general allegations set out above in the overview, the plaintiffs' Third Amended Statement of Claim contains the following specific pleadings:

19. The Law Firm drafted the LOI. Although the Law Firm did not directly communicate with both sides of the transaction, they were acting in the background and drafting terms. [E93] had direct communications with the Law Firm concerning its terms and any revisions. It was a fact known to both parties that the Law Firm was assisting in crafting the LOI, although no formal retainer was entered into. The Law Firm took the engagement upon itself. **The Law Firm was aware that the Plaintiffs were relying on it**. **They were in conference calls between the parties in which the Law Firm participated and offered advice.** At no point did the Law Firm recommend or suggest that any of the Plaintiffs obtain independent legal advice or representation. [Emphasis added]

21A. The Law Firm did not advise the Plaintiffs to seek ILA or ILR for the LOI. **Nevertheless, the Plaintiffs sent the LOI to a general solicitor in Windsor named Jim Beluli ("'Beluli") and asked him to review it.** [Emphasis added]

30. On or about October 13, 2018, Indra on behalf of Acenzia executed the joint engagement letter with the Law Firm regarding the Share Exchange Agreement and related transactions pursuant to the letter of intent dated October 4, 2018, executed by LiveWell and Acenzia. The Law Firm and Bouwer failed to explain the terms of the joint engagement letter to Grant and Indra [the Former Acenzia Shareholders] before asking them to sign it.

40. Almost immediately following the LOI, the parties worked towards finalizing the definitive agreements and closing the transaction.

40A. On November 6, 2018 Grant wrote to Archambault seeking clarification on the responsibility for the legal costs associated with closing. Specifically, the Plaintiffs asked who would bear the Law Firm's costs and who would be responsible for Grant and Indra's [the Former Acenzia Shareholders’] independent legal review.

40B. The following day Archambault responded. Bouwer was copied to this response. Archambault told Grant and Indra [the Former Acenzia Shareholders] that having their own independent lawyer would be overkill. Archambault stated that Grant and Indra's [the Former Acenzia Shareholders’] lawyer should only review the close to definitive agreement and that the reviewing lawyer was not expected to negotiate the wording of the definitive agreement. That was the reason for the joint retainer of the Law Firm.

> 40C**. While Beluli had previously mentioned to Grant and Indra [the Former Acenzia Shareholders] that he wasn't sure how the Law Firm could act for both parties on the definitive agreement**, neither the Law Firm nor Bouwer raised any concerns relating to representing both the vendor and purchaser to the transaction. In addition, neither the Law Firm nor Bouwer raised any concerns relating to McCunn's involvement as the Chairman of Livewell. [Emphasis added]
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> 40D**. Beluli was a generalist practicing in Windsor**. The Law Firm was a major firm in Ottawa with a significant corporate/commercial practice. At the time, Bouwer had approximately 25 years of practice as a business lawyer and extensive experience in commercial transactions acting on mergers and acquisitions ranging in price to up to $250 million. The Plaintiffs had no experience or sophistication with a transaction like this. Given Archambault's comments and the Law Firm's apparent comfort with proceeding on a joint retainer the Plaintiffs decided to proceed with the Law Firm only. **The Plaintiffs relied on the Law Firm and Bouwer to advise of any conflict of interest. If the Law Firm believed there was a problem, the Plaintiffs expected the Law Firm to tell them and to recommend ILA or ILR [independent legal advice or independent legal representation]. The Law Firm did the opposite and proceeded without alerting the Plaintiffs to any issue whatsoever.** [Emphasis added]
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> 73. At all material time Grant and Indra **trusted that Bouwer was acting in their best interests.** [Emphasis added]

The Plaintiffs' Productions

[20] The plaintiffs delivered their affidavit of documents on March 24, 2021. As part of their productions, the plaintiffs produced the following communications that the Former Acenzia Shareholders had with Mr. Beluli:

- An email from Mr. Bourdeau to Mr. Beluli copied to Mr. Sinha dated September 11, 2018 attaching the LOI after it was sent to them.
- An email from Mr. Beluli to Mr. Bourdeau and Mr. Sinha dated September 13, 2018, providing detailed comments on the draft SPI.
- Emails between Mr. Beluli, Mr. Bourdeau and Mr. Sinha on September 24, 2018 scheduling a phone call. Mr. Bourdeau's email stated "[the deal] is heating up, have a binding LOI"

- An email from Mr. Bourdeau to Mr. Beluli dated September 24, 2018 copied to Mr. Sinha forwarding the revised LOI and asking that Mr. Beluli review it.

- An email from Mr. Bourdeau to Mr. Beluli dated September 25, 2018 copied to Mr. Sinha with his detailed comments on the LOI. In the email Mr. Beluli states "I am not sure how you can use one law firm to represent both sides (as I am sure that law firms loyalties will lie with [E93]. I would strongly advise that you have your own counsel (of course)."

- An email from Mr. Beluli to Mr. Bourdeau copied to Mr. Sinha dated September 26, 2018 with further comments on the LOI.

- An email from Mr. Bourdeau to Mr. Beluli copied to Mr. Sinha dated November 2, 2018 attaching the "definitive agreement" stating "We are highly motivated to provide our feedback and close this deal….How is your time to review."

- A response from Mr. Beluli dated November 2, 2018 indicating that he had set aside time to review the agreement but did not see it attached to the email he received.

- An email from Mr. Beluli dated November 2, 2018 advising that Mr. Bourdeau and Mr. Sinha should have accountants advise them, with Mr. Bourdeau's response that he had the recommended accountant working on this.

- An email from Mr. Beluli to Mr. Bourdeau and Mr. Sinha attaching the revised SPI with a redline showing changes from the original version. It stated "Please note that as we work on the schedules to the agreement, we may require some further 'tweaking' of the reps and warranties in the agreement"

- An email from Mr. Bourdeau to Mr. Beluli dated November 8, 2018, copied to Mr. Sinha with the subject line "Draft Revised Purchase Agreement" indicating that they were reviewing the agreement and would be submitting it to E93 the next day and also thanking him for his work to date. It asked that he share his time to date on file with E93 and Mr. Bourdeau's response that he would do so. This email stated that the "corporate related work that I have done can be billed to the corporation, so I will set that out separately. I will not do any further work on the sale matter until I receive further instructions."

- An email from Mr. Beluli to Mr. Bourdeau and Mr. Sinha dated November 8, 2018, indicating that he had reviewed the schedules, noted inconsistencies and made some minor revisions, with the revised copy attached.

- A letter dated January 25, 2019, from Mr. Beluli to the Former Acenzia Shareholders which provided as follows:

Re Sale of shares of Acenzia Inc. Our File No.: 920-001

> We confirm your instructions on November 8, 2018 to cease all work on the above noted matter and we confirm that we have not provided you with any services since that date, nor have you provided us with any instructions to perform any further work. Up to November 8, 2018, we had reviewed the first draft of the purchase agreement and discussed the schedules but did not review any schedules as they were not provided to us. You have later advised that you have signed the definitive purchase agreement with Live Well with respect to the sale of your shares in Acenzia, which was completed without our involvement or knowledge. We understand that you have not retained other legal counsel to represent you and that you are relying on the lawyers for the Purchaser for all legal advice and services for this matter. As we have advised you in the past, the lawyers for the Purchaser are bound to represent only the interests of the Purchaser in this transaction and cannot represent your interests. Signing the definitive agreement without the review and advice of independent counsel advising you, has bound you to terms that may very well be more favourable to the Purchaser and to your detriment. We strongly advise that you retain independent counsel to review and advise you with respect to the closing documents before you sign them.
>
> We are enclosing our account for services rendered to November 8, 2018, which we trust you shall find satisfactory. We wish to congratulate you again with respect to the sale of the company and wish you the best in your future endeavours. Should you find that we could be of service to you in the future, please do not hesitate to contact your writer.

The Refusals

[21] Each of the refusals relate to information or documents in respect of advice that Mr. Beluli gave the plaintiffs. Specifically:

a. To produce whatever invoices followed from Mr. Beluli's email dated November 8, 2018 and January 25, 2019 produced in Schedule A of the plaintiffs' productions;

b. To provide a complete copy of Mr. Beluli's file in connection with the matters at issue in this lawsuit;

c. If the plaintiffs are claiming privilege over any part of Mr. Beluli's file, to advise the subject matter of the work to which privilege is being claimed;

d. To produce any retainer or engagement letters that Mr. Beluli entered into with any of the plaintiffs up until the closing of the transaction on May 29, 2019;

e. To produce any retainer agreement or engagement letters Mr. Beluli entered into with any of the plaintiffs in respect of the transaction reference in the LOI;

f. To inquire with Mr. Beluli what he meant when he spoke about an invoice to the corporation and an invoice to Mr. G. Bourdeau, and to advise if his position was to provide advice to the shareholders as individuals. Alternatively, to provide consent to counsel for the defendants to speak to Mr. Beluli directly; and

g. To produce any other written communications with Mr. Beluli between November 8, 2018 and January 25, 2019 about this transaction.

[22] The presence or absence of legal advice is relevant to the action for the following reasons: 1) The issue in the lawsuit relates to the Former Acenzia Shareholders' allegation that they retained and relied on advice by the Lawyers who owed them a fiduciary duty. If the Former Acenzia Shareholders retained and then received and relied on advice from Mr. Beluli, then that is relevant to these issues. When the discovery took place, the plaintiffs' former lawyer specifically agreed that "clearly, what advice my clients had is in issue"; 2) The plaintiffs' reference to Mr. Beluli in the Statement of Claim and production of documents related to Mr. Beluli's advice is an admission that Mr. Beluli's advice is material to the issues in the action. Otherwise, these documents would not have been listed in the affidavit of documents, nor would there have been reference to Mr. Beluli in the Statement of Claim.

[23] With respect to these productions the plaintiffs have filed the affidavit of Mr. Bourdeau where he indicates that he did not know until his examination for discovery on July 28, 2021 that his lawyer had included unredacted email correspondence with Mr. Beluli that he had used on occasion for routine corporate work. He says he was never advised that inclusion of these would constitute a waiver. He says he did not think his former counsel knowingly did this. However, this is inconsistent with the examination for discovery where there were multiple questions and answers relating to these documents and Mr. Beluli's involvement which occurred right in front of Mr. Bourdeau.

[24] He also says that his former counsel did not expressly advise him that forwarding a document which was protected by solicitor and client privilege would result in the loss of solicitor and client privilege. However, the email from Mr. Beluli to Mr. Bourdeau and Mr. Sinha dated September 13, 2018 states at the bottom "Please do not forward or copy the contents of this email to the other side, or it will lose its lawyer-client confidentiality protection."

[25] Additionally, both Mr. Bourdeau and his former lawyer would have seen unredacted emails had been included at the latest by the discovery which occurred on July 28, 2021. Mr. Bourdeau says that his new lawyer has now explained solicitor-client privilege to him and had he been aware of it in 2021, he would have insisted the documents be redacted.

[26] There is no evidence before me that either former or current counsel have ever asked that these documents be returned or destroyed even though Mr. Bourdeau admits he learned of this production in 2021, and his new counsel was retained in 2023. There is no affidavit from the plaintiffs' former counsel indicating that this disclosure was inadvertent. There is no motion before me seeking the return and destruction of these documents.

[27] When I asked the new counsel whether they intended to bring any motion to prevent the use of the documents, he confirmed that they would not be seeking the withdrawal of such documents from being used in the ongoing litigation.

[28] Thus, I do not find the plaintiffs' evidence or position with respect to the documents already produced persuasive. Even if what occurred in the past would not meet the test of showing that the plaintiffs voluntarily waived the privilege when the documents were initially produced with knowledge of the privilege, at this stage the plaintiffs admit that they know they could have claimed privilege. I infer that their current counsel argued this motion and took positions as instructed by them. His position that they will not seek retraction of the documents when they admit that they now know about the privilege demonstrates a voluntary intention to waive it over these particular documents as at the time of this motion.

Issue 2: Did the plaintiffs make the receipt of the legal advice from Mr. Beluli an issue in the claim or defence?

[29] As I will set out, the plaintiffs did make the receipt of legal advice an issue in this proceeding.

[30] But before examining how they did so, it is important to review the facts of *Roynat* which the defendants rely upon heavily.

[31] Roynat et al ("Roynat") entered into a financing agreement where it agreed to lend the corporate defendant $7 million. Blake, Cassels & Graydon ("Blakes") represented the corporate defendant. Cassels, Brock & Brockwell LLP ("Cassels") represented Roynat.

[32] There was a condition in the agreement requiring the corporate defendant to raise equity funds. Roynat alleged that a lawyer at Blakes gave it certain advice that this condition was fulfilled and that it relied on that advice.

[33] After the loan agreement went into default, Roynat discovered there was a shortfall in the funds raised by the corporate defendant. Roynat sued Blakes for damages for negligent misrepresentation.

[34] There were emails in the record between Blakes and Cassels relating to a certificate which was to confirm the equity funds. Blakes told Cassels that it would be providing a Certificate only and that it would not provide an independent confirmation that the corporate defendant had raised funds because the funds would not be flowing through Blakes' account.

[35] An Associate ultimately sent an email that stated that the equity raise had been completed and that the Certificate would be sent shortly.

[36] Roynat argued it relied on the Associate's email as independent confirmation that the corporate defendant had raised the necessary equity funds.

[37] Blakes argued that in all probability Roynat received legal advice from its own lawyers, Cassels. As such, Blakes argued that no reliance could be placed on the email sent by the lawyer in light of previous exchanges where Blakes said it would not be confirming that the funds were raised.

[38] At discovery, the corporate defendant answered some questions related to his discussions with Cassels but refused to answer questions concerning advice that Roynat may have received from Cassels, about the alleged confirmation of the completion of the equity funds.

[39] The Divisional Court reviewed a line of cases where courts have held that by claiming reliance on the advice received from some parties, they invite inquiry into advice they received from their own lawyers: paras. 44 to 54. It concluded that this constituted a "lengthy, clear and consistent line of authority": para. 55.

[40] Many of these cases involved claims of negligent misrepresentation where reliance is an element.

[41] However, many of the cases cited in *Roynat* did not relate to claims of negligent or fraudulent misrepresentation but reliance was nevertheless relevant.

[42] *Bank Lue AG v. Gaming Lottery Corp.* (1999), 92 A.C.W.S. (3d) 270, 43 C.P.C. (4th) 73 (Ont. S.C.) (cited in *Roynat* at para. 52) involved a failure to warn of risks of a transaction in the context of an allegation of breach of duty against a law firm. The law firm sought to show that the party had been aware of the risk and as such had not relied on the law firm. Production of solicitor-client privilege protected material was ordered: *Bank Lue AG v. Gaming Lottery Corp.* (2000), 132 O.A.C. 127, 95 A.C.W.S. (3d) 826 (Div. Ct.) at para 10.

[43] In *Allarcom Ltd. v Canwest Broadcasting Corp*. (1987), 19 B.C.L.R. (2d) 167, 6 A.C.W.S. (3d) 421 (B.C. S.C.), (cited at para. 48 of *Roynat*) production of solicitor-client privilege protected material was ordered because the defendant had pleaded estoppel and claimed to have relied on the plaintiff.

[44] Ultimately, after reviewing all of these decisions, the Divisional Court in *Roynat* concluded that where a party puts its state of mind in issue and alleges reliance on representations made by the adverse party, then privilege over legal advice it may have obtained with respect to that representation may be waived: para 59.

[45] As noted, although the case before me is not a negligent misrepresentation claim, the underlying principle in *Roynat* is not limited to misrepresentation claims. The Divisional Court's decision was based upon a party putting its own state of mind in issue. Reliance for the purposes of a misrepresentation claim is one example where this could occur. This is plain from the Divisional Court's references with approval of the following statement

from *The Law of Evidence in Canada*, 4th ed. (Markham: LexisNexis, 2014) by Sidney Lederman, Alan W. Bryant, and Michelle K. Fuerst at para. 32:

> 14.147 In assessing the question of waiver, the court must consider whether the party asserting privilege voluntarily injected the issue of its state of mind into the litigation. A mere allegation as to a statement of affairs on which a party may have received legal advice does not justify setting aside solicitor-client privilege.
>
> 14.148 The extent and nature of legal advice received by a party can be put in issue when that party alleges that he or she possessed a particular state of mind **as, for example, reliance upon the defendant's representations….**[Emphasis added]

[46] This is the general principal upon which *Roynat,* and the long line of cases therein are based.

The Solicitors' Negligence Claim

[47] The Lawyers dispute that they acted for the Former Acenzia Shareholders. They argue that the retainer agreement is clear in this regard.

[48] Therefore, it will be a question of fact that the trial judge will have to determine.

[49] The test for whether a solicitor and client relationship existed is whether a reasonable person in the position of the party would reasonably believe the lawyer was acting for them: *KMH Lawyers v. Kasandra*, 2025 ONCA 694 at para. 5. The court will take into account whether a retainer agreement was signed, instructions given or acted on, statements made to others, **legal advice given or acted upon (which involves a consideration of reliance**), and **the reasonable expectation** of the lawyer's role: *KMH* at para 6.

[50] As such, in this case the court will arguably have to consider the concepts of trust and reliance as part of the analysis of the reasonable expectations of the Lawyers' role and whether the Former Acenzia Shareholders acted on any legal advice given: *KMH* at paras. 5-6.

[51] If the relationship is not determined to be a solicitor and client relationship, the court will still have to consider whether the Lawyers owed the Former Acenzia Shareholders a duty of care. In *Whittingham v. Crease & Co.* (1978), 88 D.L.R. (3d) 353 (B.C. S.C.), beneficiaries under a will sued the lawyer who prepared the will. There was no formal solicitor and client relationship between the lawyer and the beneficiaries. The court considered the fact that the beneficiary was present when the will was signed, had an interest in the proper completion of the will and relied on the lawyer to have it properly witnessed. Under the circumstances, the lawyer was subject to an implied duty to the plaintiff to use reasonable care, skill and diligence.

[52] Similarly, in *Tracy v. Atkins* (1979), 105 D.L.R. (3d) 632, 16 B.C.L.R. 223 (B.C. C.A.) at para. 13, cited in *Brunt v. Yen*, 2006 CanLII 11905 (Ont. S.C.) at paras. 43 to 47, the court found a solicitor liable to a third party in the absence of a solicitor and client relationship in the context of a real estate transaction where the solicitor's client, the purchaser, conducted himself in such a way as to defraud the vendors. The court based its analysis on a relationship of proximity and concluded at para. 13 that "I have no difficulty in finding the solicitor liable here since he had undertaken the responsibility of effecting the conveyance of the property and he should have known the plaintiffs were relying on him to carry it out and to protect their interests. This was sufficient to establish the duty of care…"

Breach of Fiduciary Duty Claim

[53] Fiduciary relationships are characterized by discretion, influence, vulnerability, and trust: *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377, 117 D.L.R. (4th) 161, at p. 409. Fiduciary duties are owed when a solicitor and client relationship is established.

[54] In this case, if the relationship is not determined to be a solicitor and client relationship, the court will have to consider whether there is an ad hoc fiduciary duty owed. In *Hodgkinson v. Simms*, [1994] 3 S.C.R. 377 the Supreme Court cited the following statement from the "famous" case of *Lloyds Bank Ltd. v. Bundy*, [1974] E.W.C.A. Civ. 8, [1975] Q.B. 326:

> Such cases tend to arise where someone relies on the guidance or advice of another, where the other is aware of that reliance and where the person upon whom reliance is placed obtains, or may well obtain a benefit from the transaction…

The Reason Why the Plaintiffs Have Pleaded Trust and Reliance

[55] Thus, the pleadings of reliance, trust and expectation in paragraphs 19, 40(D), and 73 of the Claim are there to both support the existence of a solicitor-client relationship, and to support ad hoc duties of care and fiduciary duties if the relationship is not found to have been a solicitor-client relationship.

[56] Thus, the Former Acenzia Shareholders have and indeed must place their state of mind in issue, to prove their claim, particularly in the case they are unsuccessful in proving that they specifically retained the Lawyers. The general principal holds that since they put their state of mind in issue, they may be deemed to have waived any privilege over their communications with Mr. Beluli who they have specifically pleaded they communicated with about the transactions at issue.

[57] As a final point I reject the argument that this case is distinguishable from *Roynat* because Mr. Bourdeau has given evidence that he did not rely on Mr. Beluli. That may be his evidence, but it is unclear why that must be accepted before trial. It would essentially mean that any time a party puts his own state of mind and reliance on another into issue, it can refuse production of matters related to what another told them by making a bald allegation that they did not rely on whatever that third party told them. The Lawyers are not required

to accept the Former Acenzia Shareholders' evidence on whether they relied or not on Mr. Beluli at this early time in the proceeding. That will be a matter that must be decided by the trial judge.

Issue 3: Do the concepts of fairness and consistency require implied waiver in this case?

[58] In *Roynat* at para. 84, the court agreed even where a party puts its mental state in issue and alleges reliance, deemed waiver is not automatic. The court must consider whether fairness and consistency require implied waiver of privilege which is case specific and factually dependent. Deemed waiver and disclosure will be limited to the circumstances where the relevance of the evidence is high, and the principles of fairness and consistency require disclosure to allow a party to adequately defend against claims.

[59] The Former Acenzia Shareholders allege that they were represented by and received advice from the Lawyers to their detriment.

[60] The Former Acenzia Shareholders have purported to make their case in part dependent on communications they had with Mr. Beluli, and there are specific pleadings in that regard. See paragraph 21A where they pleaded that they brought the LOI to Mr. Beluli, paragraph 40C where they plead that Mr. Beluli told them he did not know how the Lawyers could act for both parties, and paragraph 40D where they explain why they did not continue to have Mr. Beluli involved in giving them advice.

[61] Despite the fact that they have had a new lawyer since 2023, they have brought no motion to further amend the pleading to withdraw these pleadings; therefore, I conclude that this is part of the case they intend to prove. It would be unfair for the plaintiffs to be able to advance these facts without the defendants being able to understand the full scope of Mr. Beluli's involvement.

[62] There has also been production of limited correspondence from Mr. Beluli which suggests that they may have received advice from Mr. Beluli on the LOI and SPI. However, the Lawyers have been prevented from testing this because there has been only selective disclosure.

[63] Here I also take into account the limited disclosure of emails between the Former Acenzia Shareholders and which the plaintiffs do not intend to retract.

[64] The result of this position is that the plaintiffs will be able to partially rely on communications with Mr. Beluli which may be beneficial to them. For example, Mr. Beluli's letter of January 25, 2019 says that the plaintiffs advised him that he had been directed to cease all work as of November 8, 2018, that he had only reviewed a draft of the SPI up until that time, and that they signed the SPI without his involvement.

[65] This is unfair selective disclosure. Having provided this disclosure, the Lawyers should be permitted to look behind what the Former Acenzia Shareholders assert about how limited Mr. Beluli's role was and should be required to answer the questions asked.

[66] In terms of how much must be disclosed, deemed waiver of privilege to allow a party to defend is not a waiver of all privileged communications, but only those communications relevant to the issue of reliance or to the relevant state of mind: *Roynat* at para 83.

[67] Here, the refused questions and materials sought on this motion are temporally restricted to the period when the alleged negligence and/or representations by the Lawyers were made and pertain only to Mr. Beluli's involvement in the transactions at issue and not unrelated corporate advice. The examination of Mr. Bourdeau and the limited email correspondence from Mr. Beluli produced to date shows that Mr. Beluli had discussions with the Former Acenzia Shareholders about the transactions at issue in this proceeding.

[68] There is a clear nexus between Mr. Beluli's advice or lack thereof and the Former Acenzia Shareholders state of mind and alleged detrimental reliance on the Lawyers.

[69] In this case, there was no mere allegation of a statement of affairs on which the plaintiffs may have received legal advice. Rather, there are pleadings that have sought to advance the plaintiffs case as to their own state of mind with specific reference to communications they had with Mr. Beluli.

[70] To be clear, had the plaintiffs not made specific reference to Mr. Beluli in their Statement of Claim and advice they received from him, and not already made selective disclosure, the outcome may have been different.

[71] I conclude that fairness and consistency require that the plaintiffs answer the questions refused with the following restrictions. First, all refusals shall be limited to Mr. Beluli's advice and communications to the Former Acenzia Shareholders about the SPI or LOI. Any communications that relate to Mr. Beluli's communications or advice to Acenzia about the SPI or LOI shall not be produced. This is because there is an admitted solicitor and client relationship between the Lawyers and Acenzia such that duties are automatically owed and the concept of reliance or Acenzia's state of mind is not relevant or put into issue. Second, at paragraph 24(b) above, the Lawyers seek production of Mr. Beluli's entire file. However, in the refusal at 24(c) they ask that if there is a claim of privilege in respect of any document in the file, that the reason for the claim is set out. It is not possible to consider all the items in (b), without knowing what they are and what any reason for privilege may be. It is also not possible to consider fairness and consistency and whether some documents in the file may not relate to the matters at issue in this proceeding without knowing what the documents are.

[72] If the parties cannot resolve this matter, they may return for a further motion to revisit the issue of whether the entire file should be produced after refusal at 24(c) is answered. At such motion, it may be that the documents will need to be provided to the court for its review.

[73] In making this finding, I am not concluding that in all cases of breach of fiduciary duty or where a solicitor and client relationship is in issue, the opposing party may inquire into whether or not the party alleging the breach had legal advice from someone else. Each case

must be decided on its own facts and circumstances with the guiding principle remaining the critical importance of solicitor and client privilege, whether the party with the privilege has made their state of mind an issue in the proceeding, and the principles of fairness and consistency. As set out above in the quote from *The Law of Evidence*, a mere allegation as to a statement of affairs on which a party may have received legal advice does not justify setting aside solicitor-client privilege.

Issue 3: Did the plaintiffs give an unqualified undertaking that must be answered?

[74] One of the documents that the plaintiffs produced is an email dated November 8, 2018 from Mr. Beluli to Mr. Bourdeau, copied to Mr. Sinha, which appeared to bill the Former Acenzia Shareholders for his work for them related to the transaction:

> Hi Grant, As requested, I have summarized my services to date (this obviously does not include disbursements or taxes):
>
> Services for withdrawal of Derrick as a shareholder, advising with respect to Gord and other corporate matters, and reviewing and fixing the minute book come to $4000. This can be billed to the corporation.
>
> Services for work to date of sale of shares, including advising with respect to broker, advising on LOI, and advising on share purchase agreement comes to $8900 to date. This should be billed to you.

[75] At the discovery, the plaintiffs gave an unconditional undertaking to produce all invoices following this email.

[76] When the Lawyers requested the invoices referenced, the plaintiffs produced one invoice to Acenzia for $4,000, unredacted. When the Lawyers followed up because the invoice was not complete and did not reference the $8,900 referenced in Mr. Beluli's email, the plaintiffs produced an invoice from Mr. Beluli to the Former Acenzia Shareholders in the amount of $8,900 with the description redacted.

[77] Undertakings are binding and not subject to unilateral withdrawal. Their fulfillment is essential to the integrity of the discovery process: *Towne v. Miller*, 56 O.R. (3d) 177 (S.C.) at paras. 8, 9, 11 and 13.

[78] In *Nelson and Lavoie et al*, 2017 ONSC 6063 a party similarly gave an unconditional undertaking and then asserted solicitor-client privilege only afterwards. The Divisional Court upheld an order for production given that the undertaking was not made subject to privilege or other reservation: at paras. 4, 5 and 6.

[79] Thus, I order that the plaintiffs produce the unredacted copy of the invoice.

Costs

[80] The defendants seek full indemnity costs in the amount of $20,027.

[81] There is no basis for substantial indemnity costs let alone full indemnity costs even taking into account the amount of the claim, and the plaintiffs delays in answering the

undertakings. The defendants could also have brought the required motion more promptly to address delays.

[82] The scale of costs is partial indemnity.

[83] The plaintiffs' partial indemnity costs are $6,369.81 compared to the defendants which is $10,454.10.

[84] The defendants prepared the bulk of the materials. The plaintiffs only prepared a short affidavit.

[85] In my view, the partial indemnity costs claim by the defendants is more that reasonable and within the reasonable contemplation of the plaintiffs and I award the amount claimed, which is $10,454.10.

Papageorgiou J.

Released: March 10, 2026

CITATION: Acenzia Inc. et al v. Perley-Robertson, Hill & Mcdougall LLP/S.R.L.et al, 2026 ONSC 130
COURT FILE NO.: CV-20-00637139-0000
DATE: 20260310

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:

ACENZIA INC., GRANT BOURDEAU, INDRAJIT SINHA, DERRICK BOURDEAU, AMBOUR HOLDINGS INC. and AVEC8 HOLDINGS INC.

Plaintiffs

– and –

THE LAWYERS, HILL & MCDOUGALL LLP/S.R.L., TIMOTHY J. MCCUNN, DIRK BOUWER and SEANN POLI

Defendants

REASONS FOR DECISION

Papageorgiou J.

Released: March 10, 2026