CITATION: Mozek v. Campa Construction Sudbury Ltd. 2026 ONSC 1316
COURT FILE NO.: CV-22-10373-A1
DATE: 2026-03-05

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
Walter Mozek and Susan Mozek	)	H. Borlack, for the Plaintiffs, Mozek
	)	
Plaintiffs/Responding Parties	)	
– and –	)	
	)	
Campa Construction Sudbury Ltd, and John Doe o/a Breakaway Painting	)	N. Samayaji for Campa Construction Sudbury Ltd.
	)	
	)	J. Black, for the Defendant, Breakaway Painting
Defendants/Moving Parties	)	(moving party)
	)	
Eric Knopczyk, Independent Energy Service Co. Limited and John Doe Arsonist	)	No one appearing for Eric Knopczyk
	)	B. Stern for Independent Energy Service Co. Limited
Third Parties	)	
	)	**HEARD:** March 2, 2026

DECISION ON MOTION

R.D. GORDON J.

Overview

[1] Breakaway Painting ("Breakaway") asks that McCague Borlack be disqualified from representing the plaintiffs in this action because counsel with carriage of the action for the plaintiffs (Ms. Biglou) worked at the firm which handled the defence of Breakaway in this very action.

Factual Background

[2] On May 21, 2020, the plaintiffs' cottage was damaged by fire. On or about June 18, 2020, Chubb Insurance Company retained McCague Borlack to advance a subrogated claim in the names of its insureds Walter Mozek and Susan Mozek. A Statement of Claim was issued on March 10, 2022, against Breakaway and others.

[3] Breakaway's insurer is Gore Mutual Insurance Company. On or about March 31, 2022, it retained Talia Feder and Mark Mason of the firm Mason, Caplan Roti ("MCR") to defend Breakaway. Ms. Biglou was then a lawyer employed by MCR. She joined the firm in 2014 and

had become a non-equity partner in February of 2021. She left MCR and joined McCague Borlack in April of 2023.

[4] The only evidence of any direct involvement by Ms. Biglou in the defence of the plaintiffs' claim was found in a folder titled "Pleadings" that contained multiple documents titled "Precedent for Third Party Claim" and included a third party claim from an unrelated action that listed her as the lawyer of record.

[5] Michael McDonald, the principal of Breakaway, says that he never spoke to Ms. Biglou, never had any contact with her, and never imparted any information to her.

[6] Not long after Ms. Biglou joined McCague Borlack she was assigned carriage of the plaintiffs' claim against Breakaway.

[7] Just prior to commencement of examinations for discovery several months later, Breakaway raised the issue which is now before me. The question for determination is whether in these circumstances, McCague Borlack should be disqualified from continuing to act for the plaintiffs.

The Law

[8] The seminal case on the standard to be applied in determining whether a law firm is disqualified from continuing to act in litigation by reason of a conflict of interest is *MacDonald Estate v. Martin,* 1990 CanLII 32 (SCC), [1990] 3 S.C.R. 1235. In that case the Supreme Court of Canada held that a disqualifying conflict of interest exists if: (1) The moving lawyer received confidential information attributable to a solicitor and client relationship relevant to the matter at hand; and (2) There is a risk that it will be used to the prejudice of the client.

[9] With respect to the first issue, the court held that 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.

[10] In answering the second issue, the court held that a lawyer who has relevant confidential information is automatically disqualified from acting against a client or former client, and that other lawyers in the new firm are also disqualified unless the court is satisfied on the basis of clear and convincing evidence that all reasonable measures have been taken to ensure that no disclosure will occur from the moving lawyer to the member or members of the firm who are engaged against the former client.

Analysis

[11] The first question can be broken down into the following sub-questions: (1) Has the client shown there to be a previous solicitor and client relationship? (2) If so, is that relationship sufficiently related to the retainer in question? (3) If so, has the lawyer satisfied the court that no information has been imparted which could be relevant?

Was There a Previous Relationship?

[12] There exists a previous solicitor and client relationship. Ms. Biglou was a partner at the very firm which defended Breakaway. Although she did not have carriage of its file she is bound by the firm's solicitor and client relationship.

Is That Relationship Sufficiently Related to the Retainer in Question?

[13] The relationship is with respect to the same cause of action. That is, Ms. Biglou was a partner at the firm which defended Breakaway. She is now counsel with carriage of that very action for the plaintiffs against Breakaway. The two matters are clearly sufficiently related.

Has the Lawyer Satisfied Me That No Relevant Information Has Been Imparted to Her?

[14] This question arises out of the inference that confidential information passed to her and as stated in *MacDonald,* the lawyer's burden is a heavy one. Even though the client may not have provided any confidential information to the lawyer, there is a strong inference that lawyers who work together share confidences.

[15] MCR was under retainer by Breakaway from March 31, 2022. Ms. Biglou left MCE in April 2023. It is during this 12-month period that confidential information could have passed to her.

[16] Ms. Biglou has provided an affidavit in which she swears to the following:

1. During this period of time, she worked from home.

2. The precedent third party claim bearing her name was not provided directly by her and would likely have been retrieved by other lawyers from a shared drive holding firm precedents.

3. Once she began working from home, she has no recollection of any substantive discussions regarding any specific file with the lawyers having carriage of the file.

4. Neither the lawyers with carriage nor their support staff have ever discussed the action with her.

5. She has never received confidential information with respect to this matter from anyone, including any representative of Breakaway or its insurer.

[17] In *MacDonald* the Court eschewed the notion that knowledge of one lawyer in a firm is the knowledge of all lawyers in the firm. It did so recognizing that this would create a situation of "overkill" whereby a conflict would arise with respect to every matter handled by the old firm that has a substantial relationship with any matter handled by the new firm irrespective of whether the moving lawyer had any involvement in it. The position accepted by the court was that there exists a rebuttable inference that confidential information has passed.

[18] Breakaway argues that Ms. Biglou's evidence that she has no confidential information is insufficient and points to the court's comments in *MacDonald* that conclusory statements in affidavits, without more, are not acceptable and puts the court in the invidious position of deciding which lawyers are to be trusted and which are not. However, I note that the court's comments to this effect are given in the context of the second question, that is, whether there is a risk that confidential information will be *used* to the detriment of a client.

[19] In deciding whether or not the lawyer has *received* confidential information, particularly when the allegation is that it should be inferred as having been received because colleagues are likely to share information, it is hard to imagine how the inference can be rebutted in any way other than by affidavit of the lawyer. In that regard, a bare conclusory statement may not suffice but a detailed explanation of why the inference does not hold up in the circumstances of a particular case may well be adequate. That evidence can be challenged by the moving party because it will have access to the file, the lawyers, and support staff from the old firm to offer evidence to the contrary. That is, such affidavit evidence is capable of objective verification.

[20] In the case before me Ms. Biglou's affidavit is persuasive and uncontradicted.

[21] On its face, it may seem unpalatable that a partner at a firm defending a client be allowed subsequently to prosecute that same client in the same action. However, that is not the test. The test is whether a reasonably informed person would be satisfied that no use of confidential information would occur.

[22] A reasonably informed person in this case would know that there was no contact between Ms. Biglou and Breakaway or its insurer, and no other evidence to suggest that she was in receipt of any confidential information about the case. Such a person would know there is uncontradicted evidence that Mr. Biglou did not work in the office during the time Breakaway was represented by MCR, had no discussions about the case with the lawyers or assistants with carriage of the file and did not access the file or have any reason to access the file during her tenure.

[23] The reasonably informed person would be satisfied that Ms. Biglou has no confidential information about this matter. If she has no confidential information, there is no risk of confidential information being used.

The Impact of the Rules of Professional Conduct

[24] Under the *Rules of Professional Conduct* of the Law Society of Ontario, it is clear that Breakaway is deemed to have been a client of Ms. Biglou.

[25] Rule 3.4-1 provides that a lawyer shall not act or continue to act for a client where there is a conflict of interest, except as permitted under the rules. Under commentary [10] of this rule, it states that lawyers have a duty not to act against a former client in the same or a related matter even where the former client's confidential information is not at risk.

[26] Rule 3.4-10 provides that unless a former client consents, a lawyer shall not act against a former client in the same matter. According to the commentary, this rule is designed to guard against not just the misuse of confidential information, but to ensure a lawyer does not attack the

legal work done during a previous retainer or undermine the client's position on a matter that was central to a previous retainer.

[27] Although not binding upon me, these rules represent an important statement of public policy and reflect the importance to the legal profession that even an appearance of impropriety should be avoided.

[28] However, the rules pertaining to the law firm to which the lawyer moves are not as strictly worded. Under Rule 3.4-20, it is only if the transferring lawyer *actually* possesses confidential information relevant to the matter that the new law firm must cease its representation of its client, obtain the consent of the new lawyer's former client, or take reasonable measures to ensure there is no disclosure of the former client's confidential information. As noted in the commentary to Rule 3.4-18, the purpose of this rule is to deal with situations in which the moving lawyer has actual knowledge, and that imputed knowledge does not give rise to automatic disqualification.

[29] The evidence satisfies me that Ms. Biglou does not have confidential information pertaining to Breakaway either actual or imputed, and therefore McCague Borlack is not disqualified from continuing to act on behalf of the plaintiffs. Whether Ms. Biglou continues with carriage of the file is not for me to decide.

Conclusion

[30] Breakaway's motion to disqualify McCague Borlack is dismissed. In the event counsel are unable to agree on costs they may make written submissions to me, not to exceed 3 pages plus attachments each, within 30 days.

The Honourable Mr. Justice R.D. Gordon

Released: March 5, 2026

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