

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Axion Ventures Inc. v. Bonner*,
2026 BCSC 90

Date: 20260121
Docket: S210438
Registry: Vancouver

Between:

Axion Ventures Inc. and Axion Interactive Inc.

Plaintiffs

And

**John Todd Bonner, Nithinan Boonyawattapisut, Monaker Group, Inc.,
William Kerby, Cern One Limited, Red Anchor Trading Corp.,
CC Asia Pacific Ventures Ltd., Jonathan Chen, HotPlay Enterprise Limited,
HotPlay (Thailand) Ltd., Christopher Bagguley, Mark Henry Saft,
Longroot, Inc., Jane Doe and ABC Corp.**

Defendants

- and -

Docket: S213309
Registry: Vancouver

Between:

Axion Ventures Inc.

Plaintiff

And

**John Todd Bonner, Nithinan Boonyawattapisut,
Cern One Limited and Red Anchor Trading Corp.**

Defendants

- and -

Docket: S217835
Registry: Vancouver

Between:

**Nextplay Technologies Inc., John Todd Bonner,
Nithinan Boonyawattapisut, Cern One Limited
and Red Anchor Trading Corp.**

Plaintiffs

And

**Axion Ventures Inc., Axion Interactive Inc. and
Ying Pei Digital Technology (Shanghai) Company Limited**
Defendants

- and -

Docket: S218677
Registry: Vancouver

Between:

Christopher Bagguley and Mark Henry Saft
Plaintiffs

And

Axion Ventures Inc.
Defendant

Before: The Honourable Mr. Justice P. Walker

**Reasons for Judgment
Re: Counsel Disqualification Application**

Counsel for Axion Ventures Inc. and Axion
Interactive Inc.:

P.J. Sullivan
L. Gnanasihamany

Appearing via videoconference:

J.T. Bonner
N. Boonyawattapisut

Place and Dates of Hearing:

Vancouver, B.C.
January 7-8 and 19, 2026

Place and Date of Judgment:

Vancouver, B.C.
January 21, 2026

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Introduction

[1] Two of the parties in these interrelated high-conflict, complex commercial actions apply, mid-trial, for an order removing the law firm, DWF (previously known and formally on record as Whitelaw Twining Law Corporation) and its lawyers (collectively, “WT”) acting for Axion Ventures Inc. and Axion Interactive Inc. (collectively “Axion”), as counsel of record.

[2] They also seek preservation, production, and non-interference orders against WT. That part of the application was not argued before me.

[3] The disqualification application is grounded on the inherent jurisdiction of the court to control its own process: see, *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, [2013] 2 S.C.R. 649 at para. 61.

[4] The applicants are John Todd Bonner and Nithinan Boonyawattapisut (whom the parties refer to as “Jess”, as will I for convenience, without intending any disrespect). Their application is brought only in VA S210438, where they are amongst a number of defendants. The application is not brought in any of the other related actions being tried at the same time, i.e., VA S217835, where they are co-plaintiffs, and VA S213309, where they are co-defendants.

[5] Reasons for judgment identifying the parties and the nature of some of their disputes, issued following certain pre-trial applications in this litigation and in related litigation, are indexed at 2021 BCSC 963, 2021 BCSC 1899, 2023 BCSC 337, and 2024 BCSC 45.

[6] The application follows upon the mid-trial production in June 2025 of what are said to be highly material documents – approximately 90,000 emails plus attached documents (“Emails”) – disclosed from the laptop computer (“Laptop”) of Axion’s former general counsel, Craig Rollins, after Axion had closed its case and while Mr. Bonner was in cross-examination.

[7] Following production of the Emails, I adjourned the trial over the summer to allow the parties to conduct their review of the Emails. Accessing the data on the Laptop proved to be highly problematic and the continuation of the trial was ultimately adjourned to early January 2026. Mr. Bonner and Jess were able to complete their initial review of the Emails by October 2025 and then, upon their further review, filed this application on December 4, 2025, before the resumption of the trial. I disagree with Axion that Mr. Bonner and Jess failed to bring their application in a timely manner; it followed within a reasonable time following their analysis of the Emails.

[8] I will also note that on account of the late production of the Emails, in September 2025, I made a mid-trial order (“September 2025 Order”) that granted Mr. Bonner, Jess, and related parties liberty to re-open and to amend their witness list by October 20, 2025, relieved Mr. Bonner of the caution he was under while in cross-examination, and allowed him, at his option, to resume his evidence-in-chief. I did not permit Axion to reopen without first seeking leave (which Axion later advised it did not intend to do).

Background

[9] The Laptop was given to WT by Mr. Rollins shortly before the trial began in February 2025. Factual issues raised at the outset of trial by Mr. Bonner and Jess include the circumstances in which Mr. Rollins was able to power up the Laptop shortly before trial after he had understood it was inoperable. Mr. Rollins has yet to testify; he is under subpoena to be called as a witness as part of the case presented by Mr. Bonner, Jess, and related parties.

[10] After its review of the Laptop, WT delivered, on behalf of Axion, shortly before trial began, approximately 314 documents (“Corporate Documents”) it had found on the Laptop, consisting primarily of material corporate records such as minutes of board of directors’ meetings and directors’ resolutions. The Emails were not produced at that time.

[11] The context surrounding the timing of production of the Emails is important for the instant application. A substantial body of relevant and in some instances, what are said to be highly material, emails and documents held in what is called a “G-Suite”, maintained by Google for Axion, had been deleted by Google well prior to trial, leaving large gaps in the documentary record that are said to have an important bearing on my assessment of credibility and the weight to be given to witnesses’ evidence.

[12] Copies of some of the Emails were already in the possession of certain parties prior to trial and hence, previously produced in the litigation, while some were not until June 2025 when data containing the Emails was produced.

[13] Mr. Bonner and Jess contend that the Emails are critical evidence. They submit that the Emails, both on their own and viewed cumulatively, prove the validity of their defences (and those of the other, related defendants) to Axion’s claims in VA S210438 for, *inter alia*, breach of fiduciary duty, theft of corporate opportunities, and dishonesty and prove the merits of their claim against Axion for recovery of alleged loans asserted in VA S217835. For example, they submit that the cumulative weight of the Emails supports the credibility of Mr. Bonner’s trial evidence given thus far and refutes the position advanced by Axion that he acted dishonestly and breached his fiduciary duties as Axion’s former chairman and chief executive officer, and that he has, along with Jess, advanced a false claim for recovery of loans exceeding USD \$6 million.

[14] Mr. Bonner and Jess point out that WT did not disclose that it had custody of the Laptop until June 2025 (a point confirmed by WT), only that Mr. Rollins had been able to power it on and that the Corporate Documents from it had been discovered and delivered.

[15] Mr. Bonner and Jess contend that when WT took custody of the Laptop, it should not only have disclosed that fact to them, WT should have examined the Laptop thoroughly for all relevant, producible documents. They assert that WT was wilfully blind to its clients’ obligation under the *Supreme Court Civil Rules [Rules]* to

produce relevant documents and to WT's ethical obligations as lawyers and officers of the court. They say that WT was wilfully blind to what relevant documents were in fact on or may be on the Laptop; and further, when WT reviewed the Laptop, WT would have or should have seen the existence of the folder or data (or both) containing some or all of the Emails. In other words, Mr. Bonner and Jess contend that having seen the contents of the Corporate Documents supporting the position of Mr. Bonner, Jess, and the related parties in the litigation, WT did not want to know what else was on the Laptop in circumstances where there were enough "alerts" (a term used by Jess) to WT over the course of the litigation that its clients were presenting a false narrative and misleading evidence to the court. As they put it in their submissions, WT "strategically avoided" knowledge of other documents on the Laptop, such as the Emails, "by choosing not to look for them, while at the same time asserting on behalf of their client that all documents had been looked for". Mr. Bonner and Jess say this is an example of what they characterize as WT's persistent approach to avoid seeking relevant documents from known custodians (such as Axion's former auditors and corporate solicitors).

[16] Mr. Bonner and Jess assert that WT's wilful blindness and failure to disclose its possession of the Laptop facilitated Axion's breach of its document disclosure obligations in the *Rules*. They submit that disclosure of the Emails made only after Axion closed its case, after Mr. Bonner and Jess (and related parties) concluded their openings and Mr. Bonner concluded his evidence-in-chief, and while Mr. Bonner was under cross-examination, caused them significant prejudice. In these circumstances, they argue that WT's wilful blindness and failure to disclose its possession of the Laptop meant it put its clients' short-term strategic interests at trial ahead of its clients' obligation to comply with the *Rules* and WT's ethical obligations, and thus, WT must be disqualified as counsel in order to preserve the integrity of this court's process.

[17] Mr. Bonner and Jess also submit that another basis to disqualify WT is their intention to call Axion's lead counsel at WT as a witness at trial to explain the

circumstances in which the Laptop was examined to further explore their assertion of wilful blindness.

[18] Mr. Bonner and Jess made it clear that they are not suggesting or asking me to find that WT acted intentionally.

Analysis

Disqualifying Counsel

[19] A litigant's counsel of choice should only be removed in the clearest of cases.

[20] The analysis is fact-specific; the court must consider the need to uphold and preserve the integrity of the justice system while ensuring that the litigant is not deprived of its choice of counsel without good cause.

[21] A litigant's right to choice of counsel should not be interfered with lightly: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235 at 1270; *S.B. v. J.M.*, 2019 ONSC 6128 at para. 105.

[22] These useful statements of principle in *Bose v. Bangiya Parishad Toronto*, 2018 ONSC 7639 are instructive for the instant application:

[95] The determination of whether a lawyer should be disqualified is very fact specific and based on an examination of all of the factors in the case including the motivation for the motion; the task of the court is to uphold and preserve the integrity of the justice system while ensuring that litigants are not deprived of their counsel of choice without good cause. Although the right to one's choice of counsel is one of the values identified in *MacDonald Estate* as bearing on the issue of whether there is disqualifying conflict, primacy is given to ensuring the integrity of both the legal profession and the administration of justice.

[23] Disqualification applications in civil cases are typically, although not necessarily, confined to circumstances where the lawyer is in a conflict of interest, such as where the lawyer: (a) acts for one or more parties in a multiple retainer; (b) is retained on a matter that involves acting against a former client; (c) changes law firms and acts against a former client with knowledge of that client's affairs; (d) accepts a retainer against a former client of the law firm related to a matter related to

a previous retainer; or (e) is in a position of having to give significant or controversial evidence in a case in which he or she or an associate is acting as counsel: *Bose* at para. 84.

[24] On this application, it is only the last of those categories – the possibility WT’s lead counsel may be a witness at trial – and Mr. Bonner and Jess’ allegation of wilful blindness that are engaged in so far as it concerns WT’s obligation to the court.

WT’s Duty is to the Court and its Clients, not the Opposing Parties

[25] It is clear from the case authorities that WT owes no duty to Mr. Bonner and Jess.

[26] In addition to its duty to its client, WT owes a duty to the court to be candid and fair, and not to intentionally mislead it; even where the latter is breached, it does not give rise to a cause of action by the opposing party: *Singh v. Nielsen*, 2016 BCSC 2420.

[27] For example, in respect of an opposing party, in *Awad v. Salna*, 2017 BCSC 429, Justice Greyell said, in respect of allegations that opposing counsel failed to disclose or hid evidence, the lawyer’s duty is to the court to be candid and fair, but owed no duty to the opposing party against whom it is expected that their efforts will be directed towards injuring the opposing party’s interests:

[22] There is an absolute privilege extended to counsel for all communications made in the course of or incidental to their representation of clients in the judicial or quasi-judicial proceedings. In *Lawrence et al v. Sandilands et al*, 2003 BCSC 211, Madam Justice Wedge stated at paras. 77–80:

[77] It is well established that in the course of counsel’s representation of his or her client’s interests, it is to be expected that “...much may be done that is intentionally and necessarily directed toward injuring the opposing party’s interests.” (***Crooks v. Manolescu***, [1995] B.C.J. No. 17 (BCSC) at paragraph 10).

[78] In ***Kamahap Enterprises Ltd. V. Chu’s Central Market Ltd.*** (1989), 40 B.C.L.R. (2d) 288 (C.A.), the Court of Appeal said at page 291 and 292:

The cause of action asserted, were it to be upheld, would be one imposing on the solicitors for one party an obligation of care to all others involved in the transaction to see the transaction properly carried into effect, even though the solicitors were retained and paid only by one of them.

...where the only damage foreseeable is damage to another's pocket or estate—where there is no foreseeable risk of personal injury or physical property damage—foreseeability of such economic loss, while essential to the existence of a duty of care, cannot, it now seems clear, generally be regarded as sufficient to create proximity and thus impose such a duty.

[79] While a solicitor may owe an ethical duty to the court to be candid and fair, the only party to whom a solicitor owes an actionable duty is his or her client (*Jensen v. MacGregor* (1992), 65 B.C.L.R. (2d) 224 at p. 228 (BCSC)).

[80] The court in *Jensen* found that in the absence of a contractual obligation and any duty of care owed between counsel for one party and the party adverse in interest, there was no recognizable cause of action, no plausible argument and no triable issue raised on the pleadings.

[Bold in original; underlining emphasis added]

[28] The same points are made in the reasons in *Singh* and *Wang v. Lee*, 2021 BCSC 2028:

Singh:

[20] In particular, allegations that counsel for the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to the claimant do not found actionable breaches of any private duty owed to the claimant: *Gateway Building Management Limited v. Manjit Singh Randhawa*, 2013 BCSC 350, at paras. 23 - 26. If it were otherwise, there would be no end to such litigation.

Wang:

[45] I will pause. Again, this is addressed to Mr Wang for his benefit. Mr Wang will appreciate that he is not unique in suing or trying to sue a lawyer that formerly represented or represents the opposite side. It is not an unusual phenomenon.

[46] The essence distilled from these authorities is that a claim against an adverse party's lawyer based in communications or acts carried out by that lawyer in the course of fulfilling his or her duties as a zealous advocate to

their client will be protected, will disclose no reasonable cause of action, and will be struck as disclosing no reasonable cause of action under the claim.

[Emphasis added]

[29] See also *Hung v. Gardiner*, 2003 BCCA 257 at paras. 33–37; *Kamahap Enterprises Ltd. v. Chu's Central Market Ltd.* (1989), 40 B.C.L.R. (2d) 288 (C.A.) at p. 291, 1989 CanLII 242; *Portnov v. Alexander Holburn + Lang LLP*, 2025 BCSC 388 at para. 38.

[30] The lawyer's duty to the court not to offer evidence they know is false or misleading is discussed in these apposite comments by the Alberta Court of Appeal in *Martel v. Andrew*, 2005 ABCA 63:

[11] ... [Ms. Martel] alleges that the Respondents presented this affidavit "knowingly and in bad faith". However, she provides no evidence of the alleged knowledge and bad faith and simply asserts them as facts. The chambers judge concluded that whether or not Mr. Martel lied in his affidavit does not translate into bad faith since there is no duty on counsel presenting an affidavit to court to verify that the information sworn to is true.

[12] We agree. Doubtless a lawyer owes a duty to the court not to offer into evidence an affidavit that he knows to be false or misleading. However, that does not mean that a lawyer must believe what his client swears to; still less does it mean that a lawyer has a duty to investigate to determine whether or not what his client states to be true is, in fact, true or false. Further, the duty owed to the court is a public duty and owed as an officer of the court to the court and not a private duty owed to the opposite side in the lawsuit. There is ample authority that the duties that a lawyer owes to the opposing party are viewed very restrictively *German v. Major* (1985), 62 A.R. 2 (C.A.). There are good policy reasons for this in the adversarial system. If it were otherwise, the conflicting duties owed by a lawyer would make the adversarial system impossible.

[Emphasis added]

[31] In *S.B.*, Justice Freyer remarked on the lawyer's duty to the court, albeit in circumstances arising from conflict that are nonetheless instructive for this application:

[83] The court in *Zaldin* [2014 ONSC 6504, [2014] O.J. No. 5355] at para. 12 summarized why the court is concerned with a relationship between lawyer and client that is too close:

The court must at all times have confidence that the lawyer will never knowingly allow false or misleading evidence to be presented to the court. The court must also have confidence

that all lawyers will answer all questions from the court in a straightforward and honest manner, without having to worry about, or wonder whether there are extraneous considerations that could impair the lawyer's ability to act appropriately [cite omitted].

[Emphasis and citation in square brackets added]

[32] WT points out that no case has been cited where wilful blindness has grounded a basis to disqualify counsel. That said, it would not be inconceivable in appropriate circumstances where counsel was reckless to whether the court was being misled.

[33] Ultimately, I must consider whether a fair-minded, reasonably informed member of the public would conclude that WT's removal is necessary for the proper administration of justice: *MacDonald Estate* at 1259–1262; *S.B.* at para. 43.

Wilful Blindness Not Established

[34] The evidence before me does not establish the assertion of wilful blindness advanced by Mr. Bonner and Jess.

[35] Although WT took custody of the Laptop shortly before the trial commenced in February 2025, the evidence before me, contained in an affidavit from Mr. Rollins sworn December 31, 2025 ("Rollins Affidavit"), is that lead counsel at WT did not know there were emails on the Laptop until Mr. Rollins alerted him to the possibility in June 2025.

[36] Mr. Rollins' evidence is excerpted below:

11. When I brought the laptop to Whitelaw Twining on February 3, 2024, I specifically showed Whitelaw Twining where the corporate documents for Axion Ventures were located on the C drive. I specifically showed the location of certain directors' resolutions/minutes and promissory notes in question.
12. I never discussed emails being on the computer with Whitelaw Twining in January or February of 2025. The first time I advised Whitelaw Twining there might be emails on the computer was in June 2025. On June 13, 2025, I advised Whitelaw Twining that if emails were accessible on the laptop, I had not gone through them to remove personal information. Mr. Sullivan [WT's lead counsel] responded that

he was not aware there were emails on the laptop, but they would immediately look into it.

[Emphasis and notation in square brackets added]

[37] Mr. Bonner and Jess nonetheless continue to point to an answer Mr. Rollins provided in June 2025, to one of their written Rule 7-5 pre-trial witness questions, that they assert is inconsistent with his affidavit evidence.

[38] Mr. Rollins' answers to the Rule 7-5 questions are attached to an affidavit sworn on June 26, 2025 by a legal assistant at a law firm who represented him on the Rule 7-5 application.

[39] The impugned answer, they submit, shows that Mr. Rollins discussed the issue of emails in his possession with WT prior to trial in January 2025.

[40] The question and answer are excerpted below:

8. Did Axion Ventures or its representatives ever ask you to produce emails between 2020 and 2025? Please answer separately for each year.

To the best of my recollection, Axion Ventures or its representatives did not ask me to produce emails until January 2025.

[Bold in original; underlining emphasis added]

[41] Although Mr. Bonner and Jess have maintained their characterization of the effect of that answer since it was delivered in June 2025, Mr. Rollins did not address their continued assertion in the Rollins Affidavit (sworn approximately six months later).

[42] However, it is not clear from the answer whether it was Axion or a representative(s), or possibly individuals from both categories, who asked Mr. Rollins for emails; even if it was the latter, it does not establish that it was WT who made the request and is thus, is not, on its face, inconsistent with para. 12 of the Rollins Affidavit.

[43] At most, it is only possible to speculate that while WT's lead counsel was unaware of the Emails until June 2025, someone else at WT might have asked Mr. Rollins for his emails earlier in January. Even if that were the case, it is, on its own, insufficient to establish wilful blindness on the part of WT.

[44] Nonetheless, in the context of this case, for example, the absence of relevant documents on account of Google's deletion of the G-suite and an assertion that Mr. Bonner, Jess, and the related parties rely on misleading documents, the fact that custody of the Laptop was handed over to WT should have been disclosed as it was known to contain material documents (i.e., the Corporate Documents), some said to be previously undisclosed, and was no longer with Mr. Rollins but now in the possession, custody, and control of Axion.

[45] What does arise from Mr. Rollins' Rule 7-5 answer is, as Mr. Bonner and Jess point out, that it conflicts with the evidence of Mr. Grant Kim (Axion's current interim chief executive officer and one of the two witnesses it called at trial), a point acknowledged by Axion in submissions.

[46] As seen from the excerpt below, Mr. Kim's evidence at trial is that in 2020 he asked Mr. Rollins for documents and understood that the Laptop was not working:

Q Okay. So, you've had -- so, Mr. Kim, why -- what is your understanding as to why Mr. Rollins, after four and a half years, part of what you were in 11 some form of business relationship or advisory relationship with Mr. Rollins, suddenly produced his laptop with these documents on it, these 314 documents, that got produced on February 4th, 2025? What is your understanding of that? How'd that happen?

A My understanding is what I heard from him previously. The computer was fried, was not working because I did ask him in 2020 what he had, what was available, we're going through litigation, et cetera...

[Emphasis added]

[47] The effect of this conflict and issues concerning the adequacy of Axion's document production in this litigation, delayed production from the Laptop, and Axion's failure to disclose that Mr. Rollins handed over custody of the Laptop to WT are raised by Mr. Bonner and Jess on their extant spoliation/fraud on the court

application scheduled for hearing following the release of these reasons, and are also issues that have been raised at trial.

[48] Thus, there is no basis on the evidence to establish that WT was wilfully blind to the existence of the Emails on the Laptop prior to June 2025, nor that WT intentionally misled the court.

[49] The most that Mr. Bonner and Jess could say is that WT should have but failed to carry out a search of the data on the Laptop for relevant documents and neglected their clients' document production obligations under the *Rules*. In fact, Mr. Bonner and Jess asserted that claim in VA S258512 against WT and some of the lawyers in that firm who act as counsel for Axion. Their claim was dismissed by Justice A. Ross on the basis that WT did not owe such duty to Mr. Bonner and Jess, and that WT was immune from their private law action: see 2026 BCSC 20.

Counsel as Witness

[50] When it becomes clear during the proceeding that counsel will be a material witness, they should be disqualified and removed as counsel of record.

Disqualification does not depend on whether the lawyer intends to testify; it is the lawyer's involvement based on participation and actual knowledge of the events as opposed to taking instructions that creates a conflict between their duty to the court and duty to their client: *Bose* at para. 98.

[51] As the reasons in *Bose* point out at paras. 99–100, where there is only the potential that the lawyer will have substantive evidence and be called as a witness, these factors should be considered on a disqualification application: (a) how likely the lawyer will be a witness; (b) the materiality and significance of the lawyer's evidence; (c) the likelihood of a real conflict or that the evidence will be tainted; (d) the stage of the proceedings; (e) the timeliness of the motion; (f) the impact of removal of counsel on his or her client's right to be represented by counsel of choice; (g) the good faith of the party making the application; (h) the mode of trial, whether judge alone or judge and jury; (i) who will call the counsel as witness; and

(j) the current and past relationship between counsel and the parties involved in the litigation.

[52] In *Gardner v. Viridis Energy Inc.*, 2012 BCSC 19, Justice C. Ross said at para. 33, “The mere potential that a lawyer will be called as a witness at trial was held not to be a sufficient basis to disqualify a lawyer in *Salley v. Salley*, 2011 BCSC 473.” While it is not necessary for the moving party to show that counsel will certainly be a material witness, it is insufficient for disqualification for the moving party to state that counsel is a potential witness or that counsel might provide some material evidence: *Bose* at para. 100.

[53] I agree with the following reasoning in *Graham v. Ontario*, [2006] O.J. No. 763, 26. C.P.C. (6th) 238 (S.C.J.) at para. 35 (referred to in *S.B.* at para. 64):

It is not sufficient for a moving party to suggest opposing counsel is a potential witness or allege only that he or she might provide material evidence. Rather, it must be established there is a real basis to believe counsel can likely, or probably, provide material evidence: see *R. v. Harris* (1994), 93 C.C.C. (3d) 478 at para. 479 I.O.C.A.); *Urquhart v. Allen Estate*, supra, at para. 22; and *Forward v. Zurich Insurance Co.* (2022, 303 A.R. 119 (Alta. C.A.)).

[Emphasis added]

[54] Thus far, Mr. Bonner and Jess have only stated their intention to call Axion’s lead counsel as a witness concerning his examination of the Laptop for relevant documents because his firm’s review of the Laptop requires further examination. They have not served him with a subpoena nor sought to further amend their previously amended witness list they delivered last November 2025 to comply with the September 2025 Order. Even assuming Mr. Bonner and Jess seek leave to amend their witness list now and serve counsel with a subpoena, they will have to address their delay in doing so as well as the probative value of lead counsel’s evidence (which, at this juncture, from the evidence before me on this application, I fail to see the basis on which his evidence concerning WT’s steps to examine the Laptop is material to the issues in dispute between the parties).

[55] In these circumstances, it is wholly premature to ground the disqualification application on the basis that Mr. Bonner and Jess intend to call Axion's lead counsel as a witness.

[56] Disqualification could, if circumstances warrant, be revisited later if the likelihood of testifying changes: *Gardner* at para. 36; *Bose* at para. 100.

[57] There is no question that disqualifying WT will, at this point in this (judge alone) trial, delay its resumption and have a financial impact on Axion.

Disposition

[58] Although Axion should have disclosed that custody of the Laptop had been given over to its counsel, I have determined that there is no basis at this juncture to disqualify WT as counsel for Axion. Wilful blindness has not been established. Nor has any basis been shown that WT intentionally misled the court. No duty is owed by WT to Mr. Bonner, Jess, and the related parties. Any failure on WT's part to examine the Laptop for documents does not give rise to a claim against it by Mr. Bonner, Jess, and the related parties. Denying Axion's choice of counsel mid-trial in circumstances where the probative value of any evidence Axion's counsel might provide has not been shown would result in an unwarranted delay in the continuation of the trial. I do not find that at this juncture, a fair-minded, reasonably informed member of the public would conclude that WT's removal is necessary for the proper administration of justice. As noted above, disqualification may always be reconsidered should matters change to show that the court has been misled or that Axion's lead counsel will be called as a witness to provide material evidence.

[59] All of that said, I disagree with Axion's suggestion that the application was tactical in nature. In hearing the submissions of Mr. Bonner and Jess, I became satisfied that although their application was misguided, it was grounded on their valid concern about the impact of the late production of material documents on the integrity of the litigation processes to date. Accordingly, there is no basis to order special costs. Issues arising from late production of the Corporate Documents and

Emails produced from the Laptop should be dealt with in costs submissions after my reasons for judgment from trial are released.

[60] In conclusion, the application to disqualify WT as counsel is dismissed.

“Walker J.”