

Court removes lawyer from record due to delays and failure to abide by court orders (*Al-Hasnawi v. Hamilton (City)*)

Courts | Delay | Litigation & Dispute Resolution

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While litigants generally have the right to be represented by counsel of their choosing, there are circumstances where a court will prohibit a lawyer from continuing to act in a matter. Often, such cases involve an actual or potential conflict of interest between the lawyer and the client or situations where the lawyer or someone at their firm may be a material witness at the trial. Courts may also order a lawyer to be removed from the record where they are responsible for delays in moving an action forward, as demonstrated by *Al-Hasnawi v. Hamilton (City)*, 2026 ONSC 274 (CanLII).

In this case, litigation involving an estates dispute was commenced in 2018. The motion judge was appointed to case manage the proceedings in 2023, and by 2026, had conducted no less than sixteen case management conferences to address preliminary issues such as the regularization of the plaintiffs' pleadings and steps to move the matter forward. As of the date to remove counsel from the record in 2026, the action remained at the pleadings stage.

Throughout this time, the plaintiffs' lawyer had been ordered at various times to take steps to amend the statement of claim and serve various materials to obtain necessary procedural orders. On more than one occasion, the lawyer failed to attend case conferences without prior notice. In February 2025, the motion judge set a timetable to exchange affidavits of documents.

When this deadline was missed by the plaintiffs' lawyer the motion judge scheduled a further case conference for October 2025. The lawyer failed to attend the case conference or inform the court of her pending absence.

The motion judge then agreed to hear a motion by the defendants to remove plaintiffs' counsel from the record.

Counsel for the moving parties were unable to find any reported decision where the court grappled with a request to remove counsel of record based on similar facts.

The motion judge relied upon the principles first stipulated by the Supreme Court in *MacDonald Estate v. Martin*, 1990 CanLII 32 (SCC), and summarized by the Superior Court of Justice in *S.B. v. J.M.*, 2019 ONSC 6128. The overriding consideration is whether a fair-minded, reasonably informed member of the public would conclude that the removal of the law firm is necessary for the proper administration of justice. The court must be attuned to the potential that the motion to remove counsel is tactical in nature.

The motion judge was satisfied that the motion was not tactical since numerous concessions had been granted to the plaintiffs' counsel by the defendants and they had even stepped in to assist with re-drafting deficient materials on her behalf. Of note, the motion judge commented that some defendants have likely preferred that a matter continue to languish and ultimately be dismissed for delay, rather than bringing the motion to remove counsel.

Further, as an officer of the court, the plaintiffs' lawyer ought to have conducted herself as the court directed. This obligation requires counsel to attend scheduled case conferences and to comply with court orders. The motion judge found that the lawyer had failed to fulfill her obligations to the court in that

regard given the history of failures to abide by the terms of court orders without explanation and multiple failed attendances at case conferences without warning or any reasonable excuse.

In addition, the action remained at the pleadings stage after two and a half years of case management, which was an inordinate delay that prejudiced all of the parties who deserved finality to the events that gave rise to the litigation.

The motion judge commented that while the lawyer may have had reasonable explanations for her conduct, there was no evidence of those reasons before the court.

In all the circumstances, therefore, the motion judge found that the lawyer's conduct could not be condoned and that a fair-minded, reasonably informed member of the public would conclude that the lawyer's involvement as counsel of record brought the administration of justice into disrepute and would continue to do so. The delays in the litigation were primarily, if not solely, caused by the lawyer such that the plaintiffs themselves were being prejudiced.

The result of this conclusion was an order that the lawyer be removed as counsel of record on the basis that it was necessary for the proper administration of justice, while balancing the maintenance of respect for and the integrity of the high standards of the legal profession and the justice system as a whole and the principle that a litigant has a right to choose their counsel.

During the course of submissions, the lawyer apologized to the court, which was accepted by the motion judge along with a stated expectation that apologies would also be extended to the plaintiffs and opposing counsel.

While the removal of a party's counsel of choice is an exceptional remedy and is only to be granted in exceptional circumstances, this illustrates the rare circumstances when such a case may arise and is a reminder to counsel that they have ongoing duties to the court during the course of litigation in addition to their own clients. A PDF version is available for download [here](#).

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