

Failure of ongoing duties results in lawyer being removed

By **James R.G. Cook**

Law360 Canada (March 4, 2026, 2:25 PM EST) -- The removal of a party's counsel of choice during litigation is a remedy granted only in exceptional circumstances. In some cases, an order removing counsel is issued because of a conflict of interest that has arisen with their own client or another party in the litigation, or because the lawyer or another member of their firm will be a material witness at trial.

The decision of *Al-Hasnawi Estate v. Hamilton (City)*, 2026 ONSC 274 is a rare example of a case where counsel was removed because of repeated failures to abide by their ongoing duties to the court during the course of litigation.

The underlying litigation involved an estates dispute that was commenced in 2018. In 2023, a motion judge was appointed to case manage the proceedings and, by 2026, had conducted no less than 16 case management conferences to address preliminary issues such as the regularization of the plaintiffs' pleadings and steps to move the matter forward.



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By 2026, the action remained at the pleadings stage.

During the course of the proceedings, the plaintiffs' lawyer had been ordered at various times to take steps to amend the statement of claim and serve 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 case management judge set a timetable to exchange affidavits of documents.

When the plaintiffs' lawyer missed this deadline, 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.

The motion judge relied upon the principles first stipulated by the Supreme Court in *MacDonald Estate v. Martin*, [1990] S.C.J. No. 41 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.

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 was satisfied that the motion was not tactical because numerous concessions had been granted to the plaintiffs' counsel by the defendants, and they had even stepped in to assist with redrafting 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 fulfil 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 lawyer apologized to the court during the submissions, which was accepted by the motion judge along with a stated expectation that apologies would also be extended to the plaintiffs and opposing counsel.

The result of the motion was an order that the lawyer be removed as counsel of record for the plaintiffs 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.

The decision illustrates the principle that a litigant's right to retain counsel of their choice is not absolute and may be outweighed when the administration of justice will be detrimentally affected by the lawyer remaining as counsel of record. The plaintiffs will now have to retain new counsel to continue with the litigation.

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