



Law360 Canada | 2 Sheppard Avenue East, Box 54 | Toronto, Ontario, M2N 5Y7 Canada | www.law360.ca
Phone: (800) 668-6481 | customerservice@lexisnexis.ca

Law firm not disqualified from acting against former executive of corporate client

By **James R.G. Cook**

Law360 Canada (July 21, 2026, 2:54 PM EDT) -- Courts have the jurisdiction to remove counsel from the record in legal proceedings as lawyers are officers of the court and their conduct affects the administration of justice as a whole. However, disqualifying a lawyer from representing a party is an extreme remedy and often depends upon whether the public interest in preserving confidence in the administration of justice outweighs a litigant's interest in retaining counsel of their choice.

One situation in which courts will consider removing a lawyer from the record is where they are acting adverse to a client. A lawyer's duty of loyalty prohibits them from acting in matters that are adverse to current clients. The duty may also extend to matters that are adverse to former clients if there is the potential for the lawyer to misuse confidential or privileged information obtained from the client during the prior retainer. Disputes may occasionally arise over whether there is sufficient overlap between the two retainers to prevent the lawyer from acting. In some cases, particularly those involving corporate clients, there may be a dispute over who precisely the client was.



James R.G. Cook

These issues were illustrated in *Piikani Nation v. McMullen*, 2026 ABCA 189, a decision of the Court of Appeal of Alberta concerning an order disqualifying the firm Gowling WLG (Canada) LLP from acting in ongoing proceedings.

The disqualification dispute arose during long-running litigation between Piikani Nation and a former senior executive and director of two Piikani-related corporations, Piikani Investment Corp. (PIC) and Piikani Energy Corp. (PEC). In 2010, Piikani Nation commenced an action against the former executive alleging misconduct related to the management of the Piikani Trust. The executive later brought a separate indemnity application seeking coverage of his legal costs.

Gowling had previously acted for PIC and PEC during the period when the former executive was their principal contact, and the firm had briefly represented the executive personally in an unrelated employment matter in 2008. Years later, a lawyer acting for Piikani Nation moved to Gowling and transferred the files relating to the litigation.

The former executive then applied to disqualify Gowling, arguing that the firm was in a conflict of interest because of its prior involvement with him and the corporations.

The case management judge found that there was no risk of misuse of confidential information by Gowling. However, the judge reasoned that the executive was a "near client" and should be treated similarly to a client for conflict purposes: *Piikani Nation v. McMullen*, 2024 ABKB 414. In the case management judge's view, as a "near client" of Gowling, the former executive should have full access to the firm's files for matters they were engaged on during his tenure, as the contents of their files and the advice they gave on various matters may be key to his defences on some of the allegations against him. Accordingly, the case management judge disqualified the firm from continuing to act.

The firm appealed the disqualification order to the Court of Appeal of Alberta.

In its decision, the appellate court reviewed the governing principles relating to the misuse of confidential information addressed by the Supreme Court of Canada in *Canadian National Railway Co. v. McKercher LLP*, 2013 SCC 39, at paragraph 24, and *R. v. Neil*, 2002 SCC 70, at paragraph 29, among other decisions. In many cases, disqualification of a lawyer arises from duties owed to current or former clients, especially concerning the protection of confidential information or the duty of loyalty. Where confidential information is at risk of misuse, disqualification is often mandatory.

The Court of Appeal noted that lawyers do not owe the same duty of loyalty to former clients as they do to current clients: *Neil*, at paragraphs 21 and 27. Lawyers are generally free to act against former clients in unrelated matters provided no confidential information is at risk.

The definition of “client” in the Law Society of Alberta’s *Code of Conduct* states that a client “may include a person who reasonably believes that a lawyer-client relationship exists, whether or not that is the case at law” (Chapter 1: 1.1-1).

The Court of Appeal noted that the *Code of Conduct* does not define the term “near client.” However, the *Code* recognizes that there may be circumstances in which a lawyer has legal and ethical duties to an individual similar to those in a solicitor-client relationship even though no solicitor-client relationship is ever actually established (Chapter 1.1-1, Commentary 1). Accordingly, the concept of a “near client” refers to rare and fact-specific cases where a non-client may nonetheless have a relationship with a lawyer that gives rise to some duties. A typical situation would be where the person provided confidential information to the lawyer with a reasonable expectation it would remain protected.

In the Court of Appeal’s view, however, there were several reasons why the former executive was not a “near client.”

First, simply acting as a corporate representative or key contact with counsel does not make an individual a client or “near client.” In that regard, lawyers acting for a corporation owe duties to the corporate entity, not to its officers or employees.

Second, the case management judge blurred the distinction between a corporation and its representatives. The Court of Appeal reaffirmed that corporations are separate legal entities, and individuals acting on their behalf cannot assume that counsel also represents them personally. Here, Gowling’s client was not the former executive.

Third, the case management judge misapplied precedent by treating the “near client” concept as a general test for determining who qualifies as a client. The Court of Appeal affirmed that this is an exceptional doctrine used only where necessary to address specific risks, such as misuse of confidential information or harm to the administration of justice.

Finally, the case management judge conflated “near clients” with former clients and incorrectly applied the stricter legal tests applicable to former clients.

The Court of Appeal concluded that the former executive was not a “near client” since no confidential information belonging to him was at issue and his interactions with Gowling occurred in his corporate capacity.

The Court of Appeal also rejected the argument that the former executive’s prior relationship as a client with Gowling required disqualification. The only personal matter in which Gowling represented the executive was a minor employment case that was entirely unrelated to the issues in the litigation. There was no connection between that representation and the current proceedings, and no evidence that confidential information from that file was relevant.

The Court of Appeal also overturned the case management judge’s determination that the former executive was entitled to access Gowling’s files. Solicitor-client privilege belonged to the corporate client (here PIC or PEC), not to the former executive personally. As a former officer, he had no authority to waive or access the corporations’ privilege.

Overall, the Court of Appeal emphasized that disqualification is a serious remedy and should not be

granted on a speculative or incomplete record. At the time of the application, the litigation had not progressed sufficiently to clearly define the issues, and there was insufficient evidence that Gowling's conduct created a real conflict. Accordingly, the court allowed the appeal and set aside the order disqualifying Gowling.

The decision may provide some comfort to large law firms as the Court of Appeal stressed that an overly broad approach to conflicts and disqualification could negatively affect access to legal services, particularly for large organizations that rely on national law firms. If a firm is faced with a motion to be removed from the record, they should consider the likelihood that a member of the firm will be called as a witness and whether they have material evidence to provide on key issues in the proceeding.

James R.G. Cook is a partner at Gardiner Roberts LLP and has been with the firm since he articulated there in 2002. As a litigator in the firm's dispute resolution group, he has experience in a broad range of commercial, real estate and professional liability litigation.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of the author's firm, its clients, LexisNexis Canada, Law360 Canada or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

Interested in writing for us? To learn more about how you can add your voice to Law360 Canada, contact Analysis Editor Richard Skinulis at Richard.Skinulis@lexisnexis.ca or call 437-828-6772.

All Content © 2003-2026, Law360 Canada