



No. VLC-S-S-248901
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

Between:

Michael Lares

Petitioner

And:

Peter van der Heyden and Flying "L" Ranch Ltd.

Respondents

NOTICE OF APPLICATION

Name of applicant: Peter van der Heyden

c/o Eyford Partners LLP
Attn: Drummond E.J. Lambert
1744 - 1055 Dunsmuir Street
Vancouver, BC V7X 1L2

On Notice To: Michael Lares

c/o Fasken Martineau DuMoulin LLP
Attn: Corry Clark
1800-13401 108 Avenue
Surrey, BC V3T 5T3

And: McQuarrie Hunter LLP

c/o Fasken Martineau DuMoulin LLP
Attn: Corry Clark
1800-13401 108 Avenue
Surrey, BC V3T 5T3

TAKE NOTICE that an application will be made by the Peter van der Heyden to the presiding judge at 651 Carnarvon Street, New Westminster, British Columbia, on 20 May 2025 at 9:45 a.m. for the orders set out in Part 1 below.

The applicants estimate that the application will take 1 hour.

This matter is not within the jurisdiction of an associate judge.

PART: 1 ORDERS SOUGHT

1. An order disqualifying Royal Morton, and his law firm McQuarrie Hunter LLP (“**McQuarrie**”), from continuing to act for Michael Lares in this matter or any related matter as a consequence of conflict of interest;
2. such further and other relief this Court deems necessary or advisable in the circumstances; and
3. costs in any event of the cause payable forthwith.

PART: 2 FACTUAL BASIS

I. BACKGROUND

1. This is an application to remove counsel in a shareholders’ dispute on the basis of a conflict of interest.
2. The company in issue (Flying “L” Ranch Ltd. (the “**Company**”)) is a British Columbia registered corporation. It has two directors and shareholders. Officers of the Company have never been appointed.

*Petition response at paras. 40-43
Affidavit of P. van der Heyden at para. 3, exs. “H”-“L”*

3. As of today, Peter van der Heyden (the applicant and one of the directors/shareholders) understood the Company’s affairs to be as follows:
 - (a) the Company has no employees;
 - (b) the other shareholder/director (Michael Lares) and his family live on lands owned and leased by the Company without paying rent;
 - (c) the Company posts on social media and receives funds from online donors;
 - (d) the Company breeds and sells horses, farms and sells small amounts of hay, and sells online retail merchandise; and
 - (e) two cabins located on the lands used by the Company are rented out to visitors from time to time.

*Petition response at para. 13
Affidavit of P. van der Heyden at para. 3*

4. McQuarrie has previously acted as the Company's solicitor in a defamation matter (the "**Original Defamation Matter**"). It now represents Mr. Lares in this windup proceeding in which the Company is a respondent. In this proceeding, Mr. Lares relies on the Defamation Matter as a basis for the windup. The orders sought include an order permitting the mortgaging of Company land.

A. McQuarrie's Defamation Files

5. On 18 January 2024, Mr. Lares executed a retainer agreement with McQuarrie in regard to the Original Defamation Matter. The retainer letter included an engagement by the Company. The directors' resolution authorizing such a retainer shows "N/A" written above the name of Mr. van der Heyden.

Affidavit of P. van der Heyden at Ex. "X"

6. Between 16 and 26 February 2024, McQuarrie issued several letters to individuals about allegedly defamatory social media posts. All the letters indicated McQuarrie represented the Company and was instructed to commence litigation against those individuals, including seeking injunctive relief.

Affidavit of P. van der Heyden at Exs. "Y"-"DD"

7. On 07 and 20 February 2024, the Company's VISA – which is paid using Company funds – paid \$2,500 and \$1,500, respectively, to McQuarrie towards a retainer called "Purchase of Shares in Flying L Ranch Ltd. from Peter van der Heyden".¹ On 04 March 2024 the VISA card made an additional payment of \$604.80 to McQuarrie which remains unaccounted for.

Affidavit of P. van der Heyden at Exs. "VV", "ZZ", and "AAA"

8. On 16 April 2024, McQuarrie opened a new defamation file for Mr. Lares only (the "**Second Defamation Matter**"). McQuarrie has advised that the Original Defamation Matter file was "closed by May 2024, but formal file closing procedures were never completed."

Affidavit of P. van der Heyden at Ex. "TT" (p. 341)

¹ Mr. Lares takes the position that these funds were returned by him to the Company in October and November 2024. In each instance, bank records indicate such a payment was made by Mr. Lares into the Company's bank account, with \$2,000 subsequently paid out later that day to pay down the Company VISA. See affidavit of P. van der Heyden at exs. "VV" and "AAA".

9. As of 04 March 2024, Mr. van der Heyden had no knowledge of the Original Defamation Matter, the Company paying retainer fees to McQuarrie, or the Company instructing McQuarrie to commence litigation against various parties.

*Petition response at para. 101
Affidavit #1 of P. van der Heyden at para. 3*

10. McQuarrie's file regarding the Original Defamation Matter was partially produced to Mr. van der Heyden's corporate solicitor on 26 July 2024. The file contains voluminous documentation related to the Company's engagement of McQuarrie.

Affidavit of M. Lares at Ex. "K"

B. The Petition

11. This petition proceeding was commenced on 20 December 2024, with Mr. Lares seeking a winding up of the Company. The petition asserts a share purchase agreement was entered into August or September 2024 and seeks to enforce same. The Company is named as a respondent.

Petition at Part 1 and Part 2, para. 34

12. In his petition, Mr. Lares expressly relies on the Company's engagement of McQuarrie in both the Original and Second Defamation Matter to support his relief sought, pleading:

23. Beginning in or around the fall of 2023, various third parties (the "Third Parties"), began making a series of negative posts on a variety of social media platforms against [Mr. Lares] and by implication, the Company (the "Initial Negative Posts"). Many of the third parties are ex-employees or ex-business associates of the Company.

24. [Mr. Lares] and the Company retained McQuarrie Hunter LLP to address these Initial Negative Posts and sent cease and desist letters to these Third Parties. At the time, [Mr. Lares] expected his buy-out of [Mr. van der Heyden's] shares and the transfer of the 80 Acres to the Company to be completed soon. In response to the cease and desist letters, the Third Parties removed the Initial

Negative Posts from the various social media platforms and temporarily ceased making new negative posts.

13. The relationship between the Original and Second Defamation Matters is clear in the petition. It goes on to assert:

27. In or around June 2024, **the Third Parties again began making negative posts** about [Mr. Lares] and the Company on various social media platforms, including Instagram.

28. On or about June 30, 2024, [Mr. Lares] watched an Instagram livestream post by two of **the Third Parties**. During that livestream, one of the Third Parties explained to their viewers that they had heard from “someone legal” that [Mr. Lares] and the Company’s defamation claim had been dropped, and they could talk as they wished now. That same Third Party also explained that the “true owner’s” (referring to someone other than [Mr. Lares]) daughter’s saddle is still at the Ranch Property. [Emphasis added.]

C. Communications with McQuarrie

14. Given Mr. van der Heyden’s status as a Company director and Mr. Lares’ decision to initiate litigation based on the Original Defamation Matter, counsel for Mr. van der Heyden has attempted to obtain information and documentation from McQuarrie related to such.

15. Despite multiple requests from Mr. van der Heyden’s counsel, McQuarrie has never produced evidence that the Company has consented to McQuarrie acting as counsel against it.

16. In response to requests from Mr. van der Heyden’s counsel for copies of invoices and unredacted reporting letters issued to the Company, on 07 February 2025 McQuarrie took the position that the information is irrelevant to this proceeding, thus refusing to provide it “in the best interests of the Company”:

...Minor redactions from our engagement agreement and reporting letters and the failure to produce invoices not paid by the Company, are not based on our "suspicion" that your client's interests do not align with the Company. Your client's conduct in necessitating the above proceeding, including the evidence in support of the petition, justify our belief.

Nevertheless, putting our assessment aside, and given the limited information in question, we have sought instructions from Mr. Lares to provide you with copies of the three invoices, the engagement letter and three reporting letters without the redactions. That information is not relevant to the proceeding at hand, but Mr. Lares must continue to operate the Company in the meantime. We are instructed not to

release that information in the best interests of the Company and Mr. Lares.

Affidavit of P. van der Heyden at ex. "VV"

PART: 3 LEGAL BASIS

17. The petitioner relies on the inherent jurisdiction of this Court and the *Code of Professional Conduct for British Columbia* (the "**Code**").

Canadian National Railway Co. v. McKercher LLP, 2013 SCC 39 at para. 13
Bhatti v Yellow Cab Company Ltd., 2023 BCSC 2530 at para. 23

A. Governing Law and Guiding Principles

18. The test on an application to disqualify counsel is objective. It asks whether there is "a real basis on which an informed member of the public would believe that relevant confidential information either has been or will be improperly disclosed". This is the overriding public policy consideration for the court.

MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235 at 1259-1260
Drozdik v. O'Nions, 2016 BCSC 2193
Ladhar v. Ladhar, 2024 BCSC 1339 at para. 121

19. Typically, two questions must be addressed:

- (a) did the lawyer receive confidential information attributable to a solicitor-client relationship or near solicitor-client relationship relevant to the matter at hand; and
- (b) is there a risk that confidential information will be used to the prejudice of the client?

MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235 at 1260
Drozdik v. O'Nions, 2016 BCSC 2193 at para. 57
Sandhu v. Mangat, 2018 BCCA 1454 at para. 25

20. The fundamental issue is whether the previous retainer is "sufficiently related" to the present retainer. If it is, a court will infer that confidential information was imparted unless the lawyer discharges the burden of satisfying the court that no relevant information was imparted. This will be a difficult burden to discharge. Where the two retainers are sufficiently related and the lawyer does not satisfy the burden, disqualification is automatic.

Sandhu v. Mangat, 2018 BCCA 1454 at para. 27
MacDonald Estate at 1260

21. In applying the test, the court may consider applicable rules of professional conduct. Where there is a rule or guideline or ethical principle directly on point, the court ought to consider it but is not bound by it.

MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235 at 1244-46
Drozdik v. O’Nions, 2016 BCSC 2193 at paras. 61-62

22. At s. 3.4-10, the Code provides:

Unless the former client consents, a lawyer must not act against a former client in:

- (a) the same matter,
- (b) any related matter, or
- (c) any other matter, if the lawyer has relevant confidential information arising from the representation of the former client that may reasonably affect the former client.

B. Discussion

1. Receipt of Confidential Information

23. The Original Defamation Matter and McQuarrie’s current retainer in this matter are intimately connected.

24. The petitioner’s materials and McQuarrie’s file indicate that the Company retained McQuarrie in January 2024 for the purposes of the Original Defamation Matter. The files disclosed to date indicate voluminous information was exchanged pursuant to that retainer.

25. Based on the petition, it is clear that the confidential information McQuarrie gained from the Original Defamation Matter was relevant to the Second Defamation Matter: the “Third Parties” who were the subject of the Original Defamation Matter were again the subject of the Second Defamation Matter. The connection between the two is most clear at paragraph 27, where the petition states: “In or around June 2024, the Third Parties again began making negative posts...” [Emphasis added.]

Petition at paras. 27-29

26. Accordingly, McQuarrie's receipt and usage of confidential information appears to have evolved as follows:

- (a) from 18 January 2024 to at least 16 April 2024, McQuarrie acted on behalf of the Company and received confidential information regarding the Original Defamation Matter;
- (b) as of around 16 April 2024 forwards, McQuarrie began representing Mr. Lares alone under a separate retainer that was directly related to the Original Defamation Matter; and
- (c) on 20 December 2024, McQuarrie filed the petition, which relies on both the Original Defamation Matter and the Second Defamation Matter as a basis for the Company's winding up (*i.e.*, a court ordered buyout and the potential mortgaging of Company land).

27. At paragraphs 23-24 of the petition, Mr. Lares clearly relies on work McQuarrie did for the Company as a basis for a petition in which the Company is a respondent.

28. The Supreme Court of Canada's warning that counsel "cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere" ought to be heeded here. A direct line can be traced from the Original Defamation Matter (for the Company) to the Second Defamation Matter, then to the current proceeding (against the Company).

29. Given McQuarrie's receipt of confidential information that is directly related to this proceeding in which it is acting against the Company, its disqualification is automatic. The court ought to order such accordingly.

2. Risk of Prejudice

30. If the court is not willing to automatically disqualify McQuarrie, it ought to consider the manifest risk that confidential information could be misused to the detriment of the Company. The focus at this stage of the test is on the possibility of confidential information being misused, not the probability of such occurring.

MacDonald Estate v. Martin, [1990] 3 S.C.R. 1235 at 1260

31. A proceeding has been commenced in which the Company is a respondent and orders are being sought which could result in the mortgaging of Company land. If the parties change the relief they seek in this proceeding, there are a plethora of other

orders that could be issued affecting the Company, including the possibility of liquidation.

Business Corporations Act, S.B.C. 2002, c. 57 at ss. 227(3) and 324

32. Here, the risk posed by the misuse of confidential information is in plain sight: the Company's former counsel has drafted a petition in a manner apparently inconsistent with documents obtained through a Company retainer.

33. Mr. Lares pleads at paragraph 24 of the petition that: "[i]n response to the cease and desist letters, the Third Parties removed the Initial Negative Posts from the various social media platforms".

34. That assertion does not appear to be accurate – or is at best incomplete – based on McQuarrie's own file in the Original Defamation Matter.

35. In correspondence between Meta (which owns Instagram) and Mr. Lares – *on which McQuarrie was copied* – Meta's team on 26 February 2024 stated Meta (not the Third Parties) had removed various social media posts.

36. For example, on 26 February 2024, Meta wrote to McQuarrie and Mr. Lares as follows:

Thanks for bringing this to our attention and helping keep the Instagram community safe. We removed some of the content you reported from Instagram because it went against our Community Guidelines.

37. In another example, on 28 February 2024 Meta wrote to McQuarrie and Mr. Lares the following:

Please know that we have conducted a review of the account and content reported.

We found that it does violate our Instagram Community Guidelines and we have removed it.

38. This is a documented, and highly concerning, example of McQuarrie presenting the Original Defamation Matter selectively in a proceeding in which it is adversarial to the Company.

39. To conclude on this point, the Company faces a proceeding in which the petitioner seeks an order allowing Company lands to be mortgaged. There is also the

possibility of the Company facing a range of other orders. As described above, the risk of McQuarrie misusing confidential information in this proceeding is documented.

40. Furthermore, while the Code is not determinative in these circumstances, the court ought to consider such principles, which provide some indication of what a reasonable person is entitled to expect from counsel. Contrary to the Code at s. 3.4-10, McQuarrie has not received the Company's consent to act against it. This factor weighs in favour of McQuarrie's disqualification.

Drozdzik v. O'Nions, 2016 BCSC 2193 at para. 62

41. Beyond the concerns immediately relevant to McQuarrie's disqualification under the case law emanating from *MacDonald Estate*, there are further troubling issues arising here from McQuarrie's handling of this matter. For example:

- (a) at the same time as the Original Defamation Matter (for the Company) was ongoing, McQuarrie was acting simultaneously for Mr. Lares (a Company shareholder) in a position adverse to the Company's other shareholder/director (Mr. van der Heyden) in regard to the purchase of Mr. van der Heyden's shares in the Company;
- (b) McQuarrie's engagement in the Original Defamation Matter was initiated by way of a director's resolution with "N/A" written above Mr. van der Heyden's signature line; and
- (c) McQuarrie – counsel for one shareholder/director of the Company, but not the Company itself – is refusing to disclose information to another Company shareholder/director about a Company engagement.²

² This is contrary a company solicitor's duty to advise all company directors so they can make decisions about what is in the best interests of such company. See, for example, *Bhatti v. Yellow Cab Company Ltd.*, 2023 BCSC 2530 at paras. 28-29.

3. Conclusion

42. McQuarrie's conduct in this proceeding is highly concerning. Based on the above, a reasonably informed person reviewing the evidence would have serious concerns regarding the use of confidential information against the Company.

43. The only appropriate remedy in the circumstances is the immediate disqualification of McQuarrie as counsel in this proceeding and any related matter.

PART 4: MATERIAL TO BE RELIED ON

1. Affidavit #1 of Peter van der Heyden made on 19 February 2025;
2. affidavit #1 of Michelle El made on 06 May 2025;
3. the authorities cited herein
4. the pleadings and proceedings herein; and
5. such other material that counsel may advise, and this court may allow.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this notice of application, you must, within 5 business days after service of this notice of application or, if this application is brought under Rule 9-7, within 8 business days after service of this notice of application,

- (a) file an application response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed application response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person; and

- (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7 (9).

Date: 06 May 2025

A handwritten signature in blue ink, appearing to be 'DL', is positioned above a horizontal line.

Drummond Lambert
EYFORD PARTNERS LLP
Counsel for the petition respondent,
Peter van der Heyden

To be completed by the court only:

Order made

in the terms requested in paragraphs of Part 1 of this notice of application

with the following variations and additional terms:

.....
.....
.....

Date: _____

.....

Signature of Judge Associate Judge

APPENDIX**THIS APPLICATION INVOLVES THE FOLLOWING:**

- discovery: comply with demand for documents
- discovery: production of additional document discovery
- other matters concerning document discovery
- extend oral discovery
- other matter concentrating oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts