

CANADA / JUDGMENT

D.N. v. J.M.M.

2025 BCSC 1953

COURT

Supreme Court of British Columbia

DECIDED

7 October 2025

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2025 BCSC 1953 D.N. v. J.M.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D.N. v. J.M.M.,

2025 BCSC 1953

Date: 20251007

Docket: E69104

Registry: New Westminster

Between:

D.N.

Claimant

And

J.M.M.

Respondent

Before: Associate Judge Hughes

Reasons for Judgment

Counsel for Claimant:

J. Dreyer

Counsel for Mr. Dinsley:

Y. Abhari

Place and Date of Hearing:

New Westminster, B.C.

October 2, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 7, 2025

- [1] On October 2, 2025, I granted an application by Sean Dinsley ("Mr. Dinsley" or the "Lawyer") to withdraw as solicitor of record for the respondent, with reasons to follow. These are my reasons.
- [2] This family law case involves allegations by the respondent that the claimant has abused the parties' children, all of which he vehemently denies. There have been numerous interim orders made, including protection orders and orders for production of records from the Ministry of Children and Family Development ("MCFD") and the local police. In the early stages of this action, while active police and MCFD investigations were underway, the claimant was prohibited from having any contact with the children. He was later allowed to have supervised parenting time. On December 30, 2024, while the respondent was represented by her third lawyer, I reversed the interim parenting arrangement and ordered that the claimant was to have care of the parties' two biological children, with the respondent's parenting time to be supervised at the discretion of MCFD or the claimant.
- [3] Mr. Dinsley is the respondent's fourth lawyer. He was retained as counsel for the respondent on April 22, 2025, and filed a notice of appointment of solicitor on April 24, 2025. Although Mr. Dinsley is counsel of record, his associate Ms. Abhari has had conduct of the file.
- [4] On July 9, 2024, while the respondent's second lawyer was on record, the claimant filed a notice of trial setting the trial of this matter for 10 days commencing October 20, 2025.
- [5] A trial management conference was held on September 5, 2025, at which time Ms. Abhari, on behalf of the respondent, made an oral application to adjourn the trial. That adjournment application was dismissed by Justice Gibb-Carsley.
- [6] A week later, on September 12, 2025, the Lawyer served a notice of intention to withdraw on the respondent and on counsel for the claimant. The same day, counsel for the claimant served an objection to the notice of intention to withdraw. On September 15, 2025, the respondent also served an objection to the notice of intention to withdraw. The Lawyer thereafter filed and served the within application.

- [7] Despite filing an objection, the respondent did not file an application response or attend at the hearing. Claimant's counsel handed up an email that she received from the respondent the previous afternoon, in which the respondent advised that she was no longer objecting to the Lawyer's withdrawal and would be applying for an adjournment of the trial.
- [8] The claimant objected to the Lawyer's withdrawal due to the prejudice caused to the parties in light of the upcoming trial. The claimant is understandably concerned that the Lawyer's withdrawal on the eve of trial may result in the very adjournment that was previously denied.
- [9] The leading authority on withdrawal of counsel is that of *R. v. Cunningham*, 2010 SCC 10. Although *Cunningham* was about withdrawal by criminal defence counsel where legal aid funding had been suspended, the considerations therein have been applied in civil and family law cases in this court, for example *Sandhu v. Household Realty Corporation Limited*, 2013 BCSC 192 and *Marchetti v. Lane*, 2023 BCSC 2258.
- [10] The considerations in *Cunningham* are set out in paras. 46-49:
- [46] The court's exercise of discretion to decide counsel's application for withdrawal should be guided by the following principles.
- [47] If counsel seeks to withdraw far enough in advance of any scheduled proceedings and an adjournment will not be necessary, then the court should allow the withdrawal. In this situation, there is no need for the court to enquire into counsel's reasons for seeking to withdraw or require counsel to continue to act.
- [48] Assuming that timing is an issue, the court is entitled to enquire further. Counsel may reveal that he or she seeks to withdraw for ethical reasons, non-payment of fees, or another specific reason (e.g. workload of counsel) if solicitor-client privilege is not engaged. Counsel seeking to withdraw for ethical reasons means that an issue has arisen in the solicitor-client relationship where it is now impossible for counsel to continue in good conscience to represent the accused. Counsel may cite "ethical reasons" as the reason for withdrawal if, for example, the accused is requesting that counsel act in violation of his or her professional obligations (see, e.g., *Law Society of Upper Canada*, r. 2.09(7)(b), (d); *Law Society of Alberta*, c. 14, r. 2; *Law Society of British Columbia*, c. 10, r. 1), or if the accused refuses to accept counsel's advice on an important trial issue (see, e.g., *Law Society of Upper Canada*, r. 2.09(2); *Law Society of Alberta*, c. 14, r. 1; *Law Society of British Columbia*, c. 10, r. 2). If the real reason for withdrawal is non-payment of legal fees, then counsel cannot represent to the court that he or she seeks to withdraw for "ethical reasons". However, in either the case of ethical reasons or non-payment of fees, the court must accept counsel's answer at face value and not enquire further so as to avoid trenching on potential issues of solicitor-client privilege.

[49] If withdrawal is sought for an ethical reason, then the court must grant withdrawal (see C. (D.D.), at p. 328, and Deschamps, at para. 23). Where an ethical issue has arisen in the relationship, counsel may be required to withdraw in order to comply with his or her professional obligations. It would be inappropriate for a court to require counsel to continue to act when to do so would put him or her in violation of professional responsibilities.

[Emphasis added.]

[11] In the case at bar, the Lawyer seeks to withdraw because of the client's failure to follow legal advice and for ethical reasons. Although those reasons are not clearly articulated in the evidence filed in support of the Lawyer's application, Ms. Abhari reiterated repeatedly in oral submissions that the withdrawal was due both to loss of confidence and for ethical reasons that could not be disclosed without breaching solicitor-client privilege.

[12] The claimant relies on *Cendric v. Castro*, 2020 ONSC 986 as authority for the proposition that a client's failure to follow legal advice is not justification for a last-minute withdrawal.

[13] However, failure to follow legal advice is not the only reason given for the Lawyer's withdrawal. The Lawyer relies heavily on undisclosed ethical reasons.

[14] I have concluded that, as the withdrawal is for ethical reasons, Cunningham mandates that I must accept counsel's assertion at face value, not enquire further, and grant the withdrawal.

[15] I indicated at the hearing that I was granting the order reluctantly. My reluctance was not due to concern about justification for the withdrawal, but rather due to the impact on the parties and the possible resulting adjournment of the trial. As I indicated during the hearing, the children involved need some stability and finality sooner rather than later.

[16] Accordingly, notwithstanding my reluctance, I have granted the Lawyer's application to withdraw for the reasons set out herein.

"Associate Judge Hughes"

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