

Citation: *R. v. Taylor*, 2025 YKTC 8

Date: 20250304
Docket: 22-00126
Registry: Whitehorse

IN THE TERRITORIAL COURT OF YUKON
Before Her Honour Judge Cairns

REX

v.

TYLER TAYLOR

Appearances:
Kathryn Laurie
Vincent Larochelle and
John Vaissi Nagy

Counsel for the Crown
Counsel for the Defence

RULING ON APPLICATION

[1] CAIRNS T.C.J. (Oral): Tyler Taylor is before the Court on a multi-count Information alleging numerous indictable offences contrary to the *Criminal Code* and the *Controlled Drugs and Substances Act*, S.C. 1996, c. 19, ranging from April 2019 to June 2022. Pleas of not guilty have been entered. Two prior trial dates were released. At this time, new trial dates remain to be set.

[2] The Crown brings an application for an order directing Vincent Larochelle to withdraw as counsel for Mr. Taylor. Mr. Taylor opposes that application. The issue

before me is whether Mr. Larochelle's former role as *amicus* precludes him from now representing Mr. Taylor on the present charges.

Background

[3] In support of its application, the Crown filed the affidavit of Brittany Larue. Mr. Larochelle argued that the Crown failed to provide a sufficient evidentiary foundation for this application. I disagree. While conjecture and bare possibility are insufficient, the applicable test simply requires some evidentiary foundation from which risk can reasonably be said to flow (*R. v. Con-Drain Co.* (1983), 2008 ONCJ 114, at para. 39). The facts set out in Ms. Larue's affidavit are sufficient for my consideration at this juncture in the process. The relevant facts are as follows.

[4] On June 1, 2022, three cell phones were seized from Mr. Taylor's residence during the execution of a Search Warrant. A warrant to examine the contents of the seized cell phones was issued on July 5, 2022. In August 2022, Cst. Morin, of the RCMP, identified that he had encountered material potentially subject to solicitor-client privilege on the seized cell phones.

[5] On August 17, 2023, David McWhinnie, counsel for the RCMP, brought an application to the Supreme Court of Yukon seeking directions for the purpose of authorizing the extraction of data from the seized cell phones while protecting solicitor-client privilege. At that time, Mr. Taylor was self-represented. On August 29, 2023, the Supreme Court of Yukon appointed Mr. Larochelle as *amicus* to assist Mr. Taylor with the RCMP's application for directions.

[6] Following a hearing on November 15, 2023, the Supreme Court of Yukon made an Order (the “Order”) providing directions to ensure that no solicitor-client privileged material from the seized cell phones was disclosed to any party other than Mr. Taylor and, with his consent, the *amicus*. The Order established a process to facilitate the segregation of privileged from non-privileged material extracted from data found in the seized cell phones. The steps described in the Order involved the relevant division of the RCMP, Mr. Taylor, and Mr. Larochelle as *amicus*. Mr. Larochelle participated in developing the terms of the Order, including ensuring that data for vetting purposes went directly to both himself and Mr. Taylor as he noted that he and Mr. Taylor could have a disagreement about vetting. The role played by *amicus* was integral to the implementation of the Order as the *amicus* could liaise with both the RCMP and Mr. Taylor.

[7] The following numbered paragraphs of the Order describe the role of *amicus* and thus are relevant to the Crown’s application:

...

4. Unredacted copies of the data extracted from each of the said cell phones shall be delivered by the Digital Forensics Service of the RCMP, ‘D’ Division, (“D-Div-DFS”) to the Respondent [Mr. Taylor], and Vincent Larochelle, *amicus* appointed to assist the Respondent;

5. D-Div-DFS shall provide the *amicus* a description of its intended method for identifying and segregating, without accessing, examining, or reading, any and all communications, documents or material passing between the Respondent and any lawyer or law firm, from an unredacted copy of the data extracted from the said cell phones;

6. The *amicus* shall be afforded the ability to communicate directly and privately with D-Div-DFS regarding the intended method for segregating solicitor-client privileged material, which communications shall be confidential, in the nature of solicitor-client privilege, and not disclosed to

anyone apart from the Respondent, unless otherwise ordered by the Court;

7. The *amicus* shall, after consultation with the Respondent and D-Div-DFS regarding the intended method proposed, notify D-Div-DFS of any objections to the method proposed, or any modifications or additions to the proposed method, including any additional terms or phrases intended for use in any keyword searches that the *amicus* considers necessary to ensure the preservation of solicitor-client privilege;

8. After the *amicus* confirms to D-Div-DFS there are no, or no further, objections or required modifications to the method ultimately proposed, D-Div-DFS shall, using that method, identify and segregate, without accessing, examining, or reading, any and all communications, documents or material passing between the Respondent and any lawyer or law firm, from an unredacted copy of the data extracted from each of the said cell phones, and prepare for each cell phone a redacted version of the data extracted as well as a copy of all material identified and segregated;

9. If the *amicus*, Respondent or D-Div-DFS cannot agree on the method to be used under the preceding paragraph of this Order, any of the Respondent, *amicus*, or counsel for the Applicant, may bring the matter back before the Court for further direction;

...

12. Copies of the redacted version of the data extracted and the segregated material for each cell phone shall be delivered by D-Div-DFS to the Respondent and the *amicus*, Vincent Larochelle, for review by the Respondent and the *amicus* to verify that the vetted copies of the data extracted are free of any and all solicitor-client privileged information;

13. All communications between the Respondent and the *amicus* concerning their examination and review of the extracted data shall be confidential, in the nature of solicitor-client privilege, and not disclosed to anyone except upon further order of the Court;

...

15. If further redactions are required, the *amicus* shall be afforded the ability to communicate directly and privately to D-Div-DFS any information which will enable D-Div-DFS to identify and segregate any additional privileged material, and prepare a further redacted data extract, to be dealt with as previously provided herein;

16. Any communication by the *amicus* with D-Div-DFS to facilitate segregating solicitor-client privileged material shall be confidential, in the nature of solicitor-client privilege, and not disclosed to anyone apart from the Respondent without further order of the Court;

17. In the event that the Respondent and *amicus* are unable to agree on whether specific material or types of material is subject to solicitor-client privilege, the Respondent and *amicus* may make application to the Court in the absence of counsel for the Applicant for review and decision. No information, including the record of any such application and decision, which shall be kept sealed by the Court, may be disclosed to any person except on further order of the Court, or a court of competent jurisdiction;

...

[8] Ms. Larue's affidavit does not describe what occurred between the filing of the Order on November 24, 2023, and late June 2024. However, by email dated June 26, 2024, Mr. Larochelle advised Cst. Morin of the RCMP, and David McWhinnie, legal counsel to the RCMP, that the terms of the Order had not been complied with. The text of that email was:

I note that the terms of the order made by Justice Campbell have not been complied with.

In particular, steps 4, 5, 6, 7, 8 and 9 were not complied with. These steps were ordered to ensure that solicitor-client privilege is protected as much as possible despite the circumstances requiring a search of the phone. It is important to abide by the terms of the order, even though they may seem cumbersome, to ensure that these types of orders can be made in the future to help law enforcement agencies investigate crime.

At any rate, at this point there is no sense going back to step 4, so I will proceed to step 12 of the order. I will, however, require a bit more time to assess how much material was excluded by D Div, and whether breach of the Court order resulted in a needless encroachment on the materials which are covered by privilege.

To this end, I ask for Cst. Morin to provide me directly, and as soon as possible, the information that should have been provided to me under step 5 of the order, except at this point it will be a description of the methodology that was used rather than the proposed methodology.

[9] By email dated July 9, 2024, Mr. Larochelle confirmed that he had reviewed the segregated data from two of the seized cell phones but had yet to receive data from the

third. He also noted he would provide the extracted data to Mr. Myers, who, at that time, was Mr. Taylor's counsel. By email dated August 21, 2024, Mr. Larochelle advised he had reviewed the data from the third cell phone. In the same email, he said he would bring to the Court's attention that the Order was not followed and, further, that he had yet to be advised by Cst. Morin of the process used to segregate the data. I note that in an email dated October 30, 2024, Mr. Larochelle stated to Ms. Laurie, Crown Counsel, that the Order had been breached again in relation to the third cell phone.

[10] At some point during the process of data segregation and vetting, Mr. Myers was retained as legal counsel for Mr. Taylor. This relationship was short-lived; however, while acting as counsel for Mr. Taylor, Mr. Myers was included in various email exchanges with Mr. Larochelle and Mr. McWhinnie in July and August 2024.

[11] By email dated September 25, 2024, while still *amicus*, Mr. Larochelle advised Mr. McWhinnie that Mr. Taylor wished to retain him as counsel on the file.

Mr. Larochelle indicated he saw no problems and that he was not conflicted.

Mr. Larochelle also raised the issue of whether his role as *amicus* would impede his ability to raise a *Charter* remedy for exclusion of evidence on the basis that Cst. Morin had failed to follow the terms of the Order. Mr. Larochelle invited Mr. McWhinnie to identify if he foresaw any issues. Mr. McWhinnie replied by email on September 28, 2024, expressing concern that representation of Mr. Taylor could give rise to an ethical conflict in relation to the work Mr. Larochelle had been doing as *amicus*.

[12] On September 30, 2024, Mr. Larochelle wrote to the Trial Coordinator for the Supreme Court of Yukon seeking to reconvene before Justice Campbell of the Supreme Court of Yukon. In that email, he indicated he would provide the Court with some comments about the procedure followed by the RCMP for the data extraction and seek direction from the Court on his ability to represent Mr. Taylor.

[13] On October 29, 2024, Mr. Larochelle, Mr. McWhinnie, and Mr. Taylor appeared before Justice Campbell. At that time, Mr. Larochelle advised the Court of his concern that the terms of the Order had not been complied with. The issue of Mr. Larochelle acting as counsel for Mr. Taylor was also raised. Justice Campbell flagged concerns with Mr. Larochelle's representation of Mr. Taylor given his role as *amicus*; however, she declined to address the potential conflict further, indicating it was a matter for the Territorial Court.

[14] The next day, by email, Mr. Larochelle advised Ms. Laurie that, as defence counsel for Mr. Taylor, he would likely take the position that the search of the cell phones was warrantless given the breaches of the Order by Cst. Morin. He said that he did not see that there was a conflict, stating that the role he played as *amicus* was the same as would have been played if Mr. Taylor had counsel. He also said that he did not foresee that he would be a pertinent witness.

[15] On November 26, 2024, Mr. Larochelle emailed Mr. McWhinnie to advise that he and Mr. Taylor had completed their review of the proposed vetting of the extracted data and were content that it did not contain any solicitor-client privileged material. In the same email, Mr. Larochelle advised that his role as *amicus* was complete.

[16] On November 28, 2024, Ms. Laurie advised Mr. Larochelle that the Crown had concerns with him acting as legal counsel for Mr. Taylor, noting the potential for him to become a material witness in relation to the alleged breaches of the Order. In response, Mr. Larochelle expressed the view that this concern could be dealt with “if and when we get there.” He further said he doubted that anything he was involved in was either relevant or disputable. Ms. Laurie replied that, if Mr. Larochelle wished to act for Mr. Taylor, a conflict hearing would be required.

[17] On December 13, 2024, Mr. Larochelle advised the Crown counsel that Mr. Taylor had retained him. Subsequently, the application now before me was filed.

Law

[18] The courts have jurisdiction to remove or disqualify counsel who have a conflict of interest. This jurisdiction flows from the fact that lawyers are officers of the court and their conduct in legal proceedings may affect the administration of justice (*MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235, at 1245). As stated in *Cheng v. Glencore plc*, 2022 YKSC 59, at para. 20,

In considering an application to remove counsel of record based on conflict of interest, the task of the court is to uphold and preserve the integrity of the justice system while ensuring that litigants are not deprived of their counsel of choice without good cause. [citations omitted]

[19] The threshold for the removal of counsel has been described as a high one. Various cases have set out that removal of counsel of choice should only be ordered where there are “compelling reasons”, “exceptional circumstances” or “good cause”. Courts should take a cautious approach and intervene only in “clear cases” (*R. v.*

Sandhu, 2011 BCSC 1137, at paras. 30 to 32). An actual or apparent conflict of interest may suffice to disqualify counsel. As noted in *Con-Drain Co.*, at para. 39, “any conflict-of-interest scenario that could reasonably occur at trial will be sufficient to require the removal of counsel”.

[20] Referring again to the *Cheng* decision, at para. 22,

...the overarching question to determine on an application to remove counsel from the record is whether a fair-minded reasonably informed member of the public would conclude that the proper administration of justice requires the removal of the lawyer. This determination is objective, fact-specific, and based on an examination of all factors in the case. [citations omitted]

[21] In considering the application before me, I remain mindful that the right of an accused person to be represented by counsel of his or her choice is a fundamental one.

As described in *R. v. Yates*, 2023 SKCA 47:

55 Case law also supports the view that right to retain counsel of choice is inferentially entrenched in ss. 7, 10(b) and 11(d) of the *Charter*... “The solicitor–client relationship is anchored on the premise that clients should be able to have complete trust and confidence in the counsel who represent their interests”... . Thus, “[i]t therefore follows that the accused’s right to control the conduct of the defence free from unjustified state interference is a significant principle underlying the constitutional protection of the right to choice of counsel”...

56 Counsel of choice is also seen as being significant to the broader societal perception of fairness in the criminal justice system...

[37] ... Including with this fundamental right to counsel, the additional right to choose one’s own counsel enhances the objective perception of fairness because it avoids the spectre of state or court interference in a decision that quite properly should be the personal decision of the individual whose interests are at stake and whose interests the counsel will represent.

Put another way, the right to counsel of choice enhances the broader societal opinion and reputation of the administration of justice... [citations omitted]

[22] The authorities are equally clear that the right to counsel of choice is subject to reasonable limitations. While it is a fundamental right and ought to be zealously guarded by the court, it is not an absolute right and must give way in certain circumstances to other considerations, particularly where there is a conflict of interest (*R. v. Speid*, (1983) 43 O.R. (2d) 596 (ONCA), at para. 5; *Sandhu*, at para. 28). Further, the right to counsel of choice does not include an entitlement to be represented by counsel who suffers from a disqualifying conflict (D. Layton & M. Proulx, *Ethics and Criminal Law*, 2nd edition (2015), p. 275)).

[23] As described in *R. v. Louie*, 2015 BCCA 23, a lawyer's duty of undivided loyalty:

16 ... is essential to effective legal representation in an adversarial system, and so to the integrity of the administration of justice and to public confidence in the justice system. The duty of loyalty goes beyond an obligation to protect confidential information, and engages the broader principle of avoidance of conflicts of interest. A conflict of interest arises in circumstances that present a "substantial risk that the lawyer's representation of the client would be materially and adversely affected by the lawyer's own interests or by the lawyer's duties to another current client, a former client, or a third person": *R. v. Neil*, 2002 SCC 70 at paras. 12-13, 17-19, 31. The importance of avoiding a conflict of interest is enshrined in the codes of conduct that delineate the ethical obligations of Canadian lawyers...

17 These principles have particular importance in the criminal justice system. Divided loyalty arising from a conflict of interest in this setting may result in ineffective representation and interference with the ability to make full answer and defence, resulting in a miscarriage of justice...

[24] In *R. v. Widdifield*, (1995) 25 O.R. (3d) 161 (O.N.C.A.), the Ontario Court of Appeal stated at para. 25:

...A lawyer can render effective assistance only when that lawyer gives the accused's cause the undivided loyalty which is a prerequisite to proper legal representation. Within the limits imposed by legal and ethical constraints, the lawyer must champion the accused's cause without regard to counsel's personal interests or the interests of anyone else... This duty of undivided loyalty not only serves and protects the client, but is essential to the maintenance of the overall integrity of the justice system...

[25] The need to protect the confidence of the public in the legal profession is of particular importance in the administration of criminal justice (*R. v. Neil*, 2002 SCC 70, at para. 12). On this point, a number of authorities were canvassed in *R. v. Brissett*, 2005 CanLII 2716 (Ont. Sup. Ct.), Ontario Superior Court of Justice citations omitted:

61 Apart from the specific benefits to litigants or clients arising from the lawyer's duties of loyalty, avoidance of conflict, and preservation of confidential information, fulfilment of these duties enhances public respect for the administration of criminal justice.

62 In *R. v. Neil*, ... the court recognized that:

Unless a litigant is assured of the undivided loyalty of the lawyer, neither the public nor the litigant will have confidence that the legal system ... as a reliable and trustworthy means of resolving their disputes and controversies ... [page268]

63 In *MacDonald Estate* ... [the SCC] recognized that avoidance of conflict by lawyers contributed to "the integrity of our system of justice" and that loss of confidence in the loyalty of counsel "would deliver a serious blow ... to the public's confidence in the administration of justice".

...

64 In *R. v. Robillard*, the court stated:

The court is always required to consider the public interest and the need for public confidence in the administration of criminal justice. ... "the public has an interest in the proper trial of accused persons". It is in the interest of the public as well as the accused that the fundamental rules of a fair trial be observed.

Public confidence in the criminal justice process would surely be undermined by any appearance of impropriety in

the conduct of the trial... This confidence [public confidence in the administration of justice] rests on the fundamental fairness of the ...criminal trial process. It requires not only the avoidance of professional impropriety but also the avoidance of any appearance of impropriety.

65 In R. v. Parsons, ... the court observed:

While the public has a definitive interest in the fairness of process designed to resolve private disputes, this concern is heightened in criminal matters as public confidence in the integrity and fairness of the criminal justice system is indispensable to modern society. ...

[26] The test for removal of counsel because of conflict at the trial level is well-settled.

As noted by the Ontario Court of Appeal in *Widdifield*:

It is important to distinguish between the respective functions of a trial judge and an appellate court when faced with a conflict of interests claim. Where the issue is raised at trial, the court must be concerned with actual conflicts of interests and potential conflicts that may develop as the trial unfolds. In deciding whether counsel should be permitted to act for co-accused, trial judges must, to some degree, speculate as to the issues which may arise and the course the trial will take. The trial judges' task is particularly difficult since they cannot be privy to the confidential discussions which may have passed between the clients and counsel and which may reveal the source of potential conflicts. Given those circumstances, trial judges must proceed with caution and when there is any realistic risk of a conflict of interests they must direct that counsel not act for one or perhaps either accused.

[27] This test establishes that a conflict of interest will exist at the trial stage where there is "any realistic risk" of an adverse effect. The test is less onerous at the trial stage because courts must proactively prevent harm. "Any realistic risk" has been described as something less than a probability but more than mere conjecture or speculation. As described in *Con-Drain Co.*, at para. 39:

It seems that "any realistic risk of conflict of interest" means a potential for conflict based on an evidentiary foundation from which risk can

reasonably be said to flow. It would appear that any conflict-of-interest scenario that could reasonably occur at trial will be sufficient to require the removal of counsel. ...

[28] As noted in *Ethics and Criminal Law* at page 272

The “any realistic” test represents, to some extent at least, a preference for avoiding mistrials and overturned convictions over the competing interest of the accused’s right to counsel of choice.

[29] Finally, the case law indicates that if the appearance of conflict, as opposed to the presence of conflict, is sufficient to shake the public’s confidence in the integrity, fairness or reliability of the criminal justice system, then the lawyer whose presence creates that appearance must be disqualified (*R. v. Quiriconi*, 2011 BCSC 1737, at para. 24, citing *Con-Drain Co.* and *R. v. Parsons* (1992), 72 C.C.C. (3d) 137 (Nfld. C.A.).

Application to this Case

[30] Mr. Larochelle argues, and I agree, that there is no concern for the misuse of confidential information on the facts of this case. However, this application does not turn on that issue. This application is not about confidential information; rather it is about the duty of loyalty more broadly and the appearance of impropriety.

[31] Mr. Larochelle argues that his role as *amicus* was identical to the role that would have been played by Mr. Taylor’s legal counsel. For several reasons, I do not accept this argument. First, as *amicus*, Mr. Larochelle’s duty of loyalty was to the Court, not to Mr. Taylor, and his role was explicitly limited by the terms of the appointment. Second, para. 17 of the Order contemplated that Mr. Larochelle and Mr. Taylor might not be in

agreement as the vetting process unfolded and, if so, the steps that could be taken. On this point, Mr. Larochelle's email of November 4, 2023 acknowledges that he and Mr. Taylor might have disagreements given he was not acting as Mr. Taylor's counsel. Third, Mr. Taylor retained legal counsel during the data segregation process and that lawyer was included in the process of review so that he could advance Mr. Taylor's position. I find that Mr. Larochelle, as *amicus*, did not play a role identical to defence counsel.

Witness

[32] The Crown argues that Mr. Larochelle may be called as a witness if the proposed *Charter* application is brought by Mr. Taylor. As noted by Justice Campbell in the *Cheng* decision:

28 Legitimate concerns arise from lawyers simultaneously acting as counsel and witness in a proceeding. ... [citing *Mazinani v Bindoo*, 2013 ONSC 4744]

...

- (v) The court's concern of a lawyer appearing as a witness is that (i) there may be a conflict of interest between the lawyer and client and (ii) the administration of justice can be impaired by a conflict between the lawyer's obligations of objectivity and detachment which are owed to the court and the lawyer's obligation to his or her client to present evidence in as favourable a light as possible. In *Urquhart v. Allen Estate*, [1999] O.J. No. 4816 (S.C.J.) ... [the Court said] at paras. 27-28):

When counsel appears as a witness on a contentious matter, it causes two problems. First, it may result in a conflict of interest between counsel and his client. ... The second problem relates to the administration of justice. The dual roles serve to create a conflict between counsel's obligations of objectivity and

detachment, which are owed to the court, and his obligations to his client to present evidence in as favourable a light as possible. This is a conflict that cannot be waived by the client as the conflict is between counsel and the court/justice system.

Counsel are independent officers of the court. The trial judge must be able to rely upon plaintiffs' counsel for a high degree of objectivity. The overriding value, in these circumstances, is concern for the proper administration of justice. A distinction must be drawn between the role of counsel as an independent officer of the court and the role of a witness whose objectivity and credibility are subject to challenge.

[33] The Crown argues that if Mr. Taylor brings a *Charter* application to exclude the evidence obtained through the alleged breach of the Order, Mr. Larochelle's role as *amicus* may require him to attend as a witness. Mr. Larochelle argues that, should this arise, it can be dealt with at that time. I do not agree that this concern should lie in reserve to be addressed later. Such an approach is inconsistent with the test for removal of counsel at the trial stage, which calls on trial judges to act proactively to prevent conflicts from materializing. The test in *Widdifield* requires me to consider potential conflicts that may develop as the trial unfolds; I must, to a certain degree, speculate as to the issues that may arise and the course the trial will take.

[34] In my view, the *Charter* breach alleged may bring into question Mr. Larochelle's decision as *amicus* not to bring the alleged breach of the Order to the Court's attention and, further, his determination of the import of the breach. These issues are reasonably likely to be relevant. If Mr. Larochelle is called as a witness, there is a reasonable risk that Mr. Larochelle will have divided loyalties.

[35] On the evidence filed in support of the Crown's application, I accept that there is a real basis to believe that Mr. Larochelle can provide material evidence and would likely be called as a witness in relation to the proposed *Charter* application. I find that there is a realistic risk that Mr. Larochelle's representation of Mr. Taylor would be adversely impacted by Mr. Larochelle's own interests, namely, his interest in protecting his professional reputation.

Appearance of Impropriety

[36] Turning now to the second concern: the appearance of impropriety.

[37] The facts of this case are somewhat unique, as the potential for conflict arises out of Mr. Larochelle's role as *amicus* in relation to the application concerning the search of cell phones seized during the investigation of Mr. Taylor's criminal charges. While the role of *amicus* is highly adaptable, as described in *R. v. Kahsai*, 2023 SCC 20 at para. 37, "the defining feature of *amicus* is that they owe their duty of loyalty exclusively to the court, regardless of the circumstances or the specific terms of their appointment."

[38] The crux of the matter, in my view, is this. As noted above, public confidence in the administration of criminal justice requires not only the avoidance of professional impropriety but also the avoidance of any appearance of impropriety. In this case, Mr. Larochelle was appointed as *amicus* to assist with the implementation of the Order. In that role, his duty of loyalty was to the Court. As *amicus*, his role included ensuring implementation of the steps established by the Order.

[39] While acting as *amicus*, Mr. Larochelle identified not once, but twice, what he viewed as breaches of the very Court Order he was appointed to assist with. Despite believing that the terms of the Order had been breached when he received data from the first two cell phones, Mr. Larochelle did not bring this issue to the attention of Justice Campbell. Instead, he made the decision to proceed without direction from the Court, pressing ahead in relation to the third cell phone. Upon receiving the data from the third cell phone, Mr. Larochelle again thought the Order had been breached and again he did not bring this concern to the attention of Justice Campbell in a timely manner. Then, before his role as *amicus* had concluded, he began considering representing Mr. Taylor. In September 2024, while still acting as *amicus*, Mr. Larochelle advised Mr. McWhinnie that Mr. Taylor wished to retain him and he wondered if his role as *amicus* would impede his ability to argue for the exclusion of the evidence based on Cst. Morin's failure to abide by the Order. On October 30, 2024, still acting as *amicus*, Mr. Larochelle advised Ms. Laurie about the potential for him, as Mr. Taylor's defence counsel, to argue a *Charter* breach based on the allegation that the Order had been breached.

[40] This is the same Order he had been appointed *amicus* to assist with implementing. In other words, while still *amicus*, Mr. Larochelle identified a *Charter* argument that he could bring on Mr. Taylor's behalf that relies on the very breach of the Order he had identified and failed to bring to the attention of the Court. Given the above, I find that a fair-minded, reasonably informed member of the public would conclude that the proper administration of justice requires the withdrawal of Mr. Larochelle on the basis that there is an appearance of impropriety.

Conclusion

[41] The Crown's application for an order directing Mr. Larochelle to withdraw as counsel for Mr. Taylor in these proceedings is granted.

[42] This was not an easy decision. I note that delay is a significant issue in Mr. Taylor's case and that removal of Mr. Larochelle as counsel will further contribute to that delay. However, Mr. Taylor has been aware that there were potential concerns with Mr. Larochelle's ability to represent him since October 2024. I also acknowledge that Mr. Larochelle made submissions to the effect that there are only a few resident criminal lawyers available to assist Mr. Taylor. While that may be true, that difficulty cannot trump the issues discussed above. It is also worth noting that Mr. Taylor's two prior lawyers were non-resident lawyers – he is evidently aware that he can retain lawyers from outside the Yukon.

[43] Mr. Taylor – you were advised in October to have a Plan B in place in case Mr. Larochelle could not represent you. What, if any, steps have you taken?

CAIRNS T.C.J.