

Form 27  
[Rules 6.3 and 10.02(1) OF THE COURT  
FILED  
Clerk's Stamp  
**JUN 16 2014**  
JUDICIAL CENTRE  
OF CALGARY

COURT FILE NUMBER **1401-04781**  
 COURT **COURT OF QUEEN'S BENCH OF ALBERTA**  
 JUDICIAL CENTRE **Calgary**  
 PLAINTIFF **HARDIE & KELLY INC., IN ITS CAPACITY  
 AS TRUSTEE IN BANKRUPTCY OF  
 ASSISTIVE FINANCIAL CORP.**

DEFENDANTS **RANDY SCHIFFNER, SLADE SCHIFFNER,  
 BRANDON SCHIFFNER, ELAYNE  
 SCHIFFNER, CAMERON SCHIFFNER AND  
 BRANDI SCHIFFNER**

DOCUMENT **APPLICATION BY THE  
 PLAINTIFF:  
 Removal of Burnett, Duckworth &  
 Palmer LLP as Counsel**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
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**NOTICE TO RESPONDENTS: BURNETT, DUCKWORTH & PALMER LLP, DRANDY  
 SCHIFFNER, SLADE SCHIFFNER, BRANDON SCHIFFNER AND ELAYNE  
 SCHIFFNER**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the master/judge.

To do so, you must be in Court when the application is heard as shown below:

Date **Tuesday July 15, 2014**  
 Time **2:00 p.m.**  
 Where **Calgary Courts Centre, 601-5<sup>th</sup> Street S.W., Calgary AB**  
 Before Whom **The Honourable Justice Macleod**

Go to the end of this document to see what else you can do and when you must do it.

**Remedy claimed or sought:**

1. An Order:
  - (a) Declaring that Burnett, Duckworth & Palmer LLP (“BDP”), lawyer of record for the Defendants (as defined below), is in a disqualifying conflict of interest in the within action, being Court of Queen’s Bench Action No. 1401-04781 (the “Action”);
  - (b) Disqualifying BDP from acting in the Action for the Defendants;
  - (c) Removing BDP as lawyer of record for the Defendants;
  - (d) Striking the Statement of Defence filed by BDP on behalf of the Defendants in the Action;
  - (e) Extending or staying any and all time periods prescribed by the Alberta *Rules of Court* as they relate to Hardie & Kelly Inc.’s, in its capacity as the trustee in bankruptcy (the “Trustee”) of Assistive Financial Corp. (“Assistive”), obligations to take any steps in the Action; and
  - (f) Costs of the within Application in favour of the Trustee on a full indemnity basis.
2. Such further and other relief as Counsel for the Trustee may advise and this Honourable Court considers just and appropriate in the circumstances.

**Grounds for making this application:**

3. Until early February 2014, BDP represented Assistive as counsel in various corporate and litigation matters.
4. In particular, BDP represented Assistive in corporate and contractual matters which involved the CFS Enterprise (as defined in the Statement of Claim in this Action), particulars of which transactions are now directly relevant to the disputes between Assistive and the Defendants in this Action.
5. BDP represented Assistive in litigation which is still pending between Assistive and the CSF Enterprise under Action No. 1301-11081 in this Court (the “Pending CSF Action”), and BDP is still on record as Assistive’s counsel. There is a significant overlap between the facts and disputes in the Pending CSF Action and this Action.
6. BDP, in its capacity as counsel to Assistive, came into possession and was privy to confidential information of Assistive which is directly relevant and material to Assistive’s claims in this Action against the Defendants.

7. BDP prepared and filed the Statement of Defence of the Defendants in this Action while possessed of Assistive's confidential information, and used that information to prepare the Statement of Defence.
8. BDP was involved as counsel to Assistive in some of the very transactions and actions which the Defendants caused Assistive to take (or prevented Assistive from taking) to which the Trustee objects and which form the basis of some of the claims against the Defendants.
9. BDP may have liability to Assistive for the advice it gave, or failed to give, to Assistive.
10. The Trustee warned BDP that it cannot act as counsel for the Defendants, but BDP ignored such caution.
11. By acting as counsel for the Defendants in this Action against Assistive, BDP will be acting directly against its former client which disclosed its confidential information to BDP.
12. BDP received confidential information from Assistive attributable to a solicitor-client relationship which is relevant to the issues raised in the Action.
13. Assistive is being prejudiced by BDP acting as counsel for the Defendants, and will be prejudiced further if BDP is not disqualified from representing the Defendants.
14. A reasonable person would conclude that BDP is in a conflict of interest and that there has been, or could be, disclosure of Assistive's confidential information.
15. Disqualification is the appropriate remedy to prevent misuse of Assistive's confidential information.
16. The maintenance of the public confidence in the integrity of the legal profession and the administration of justice requires that BDP no longer represent the Defendants in the Action.

**Material or evidence to be relied on:**

17. The Affidavit of Marc Kelly, sworn on June 10, 2014.
18. The pleadings filed in the Action.

**Applicable rules:**

19. *Alberta Rules of Court*, AR 124/2010, Division 2 of Part 1, Rules 6.3 and 13.5.
20. Such further and other Rules as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

21. *Judicature Act*, RSA 2000, c J-2, s 8.
22. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
23. Law Society of Alberta, *Code of Conduct*.

**Any irregularity complained of or objection relied on:**

24. None.

**How the application is proposed to be heard or considered:**

25. In person before the Honourable Justice Macleod, with some or all of the parties present, on affidavit evidence.

**WARNING**

If you do not come to Court either in person or by your lawyer, the Court may give the applicant(s) what they want in your absence. You will be bound by any order that the Court makes. If you want to take part in this application, you or your lawyer must attend in Court on the date and at the time shown at the beginning of the form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.