

**SUPERIOR COURT OF JUSTICE - ONTARIO  
DIVISIONAL COURT**

**RE:** XIANGWEI CHEN

Appellant

**AND**

GE LI and ACHKAR LAW PROFESSIONAL CORPORATION

Respondents

**BEFORE:** M.D. Faieta J

**COUNSEL:** *Xiangwei Chen*, on her own behalf  
*Brett Hughes*, for the Respondents

**HEARD:** October 21, 2025

**Faieta J.**

**ENDORSEMENT**

[1] The appellant Xiangwei Chen retained the respondents to commence an employment law and human rights claim against her former employer. She paid a retainer of \$5,000.00. About one month later, after reviewing a draft demand letter that the respondent Ge Li had prepared, the appellant was dissatisfied with its content and terminated the retainer. Ms. Li sent an invoice to Ms. Chen for \$4,890.08, including disbursements and HST, for her services. The respondent Achkar Law Professional Corporation (“ALPC”) paid the invoice using Ms. Chen’s retainer deposit and refunded the balance of \$109.02 to her.

[2] Ms. Chen made a complaint to the Law Society of Ontario (“LSO”) about the respondents. She complained that she had been overcharged. Ms. Chen states that a representative of the LSO told her to “contact the assessment office”. Ms. Chen states that she attended at the assessment office and was told to go to the civil intake office. The LSO sent a letter to Ms. Chen which states:

The Assessment Office of the Superior Court of Justice, not the Law Society, has jurisdiction over assessment. A court officer called the Assessment Officer may review and adjust a lawyer’s account in the appropriate circumstances.

[3] Ms. Chen states that she attended at the civil intake office after receiving the LSO’s letter and was told “to go to the Small Claims Court”.

[4] Five months later, in March 2024, Ms. Chen commenced a claim in the Toronto Small Claims Court for the return of her \$5,000 retainer.

[5] The respondents brought this motion to strike the claim under Rule 12.02 of the Small Claims Court Rules, O. Reg. 78/06 on the ground that it discloses no reasonable cause of action and is inflammatory, waste of time, a nuisance or abuse of the court's process.

[6] A motion to dismiss under Rule 12.02 "... is a motion that is brought in the spirit of the summary nature of Small Claims Court proceedings and involves an analysis of whether a reasonable cause of action has been disclosed or whether the proceeding should be ended at an early stage because its continuation would be 'inflammatory', a 'waste of time' or a 'nuisance'": *Van de Vrande v. Butkowsky*, 2010 ONCA 230, 99 O.R. (3d) 641, at para. 20.

[7] On January 16, 2025, Deputy Judge Vicars of the Toronto Small Claims Court granted the following Order:

For oral reasons given, the Plaintiff's Claim is struck. The plaintiff shall pay costs to the defendants in the amount of \$304 inclusive of disbursements.

[8] In her reasons, Deputy Judge Vicars granted the respondents' motion on the grounds that the claim disclosed no reasonable cause of action because the Small Claims Court has no jurisdiction over Ms. Chen's claim, as it was agreed that the claim was dispute over legal fees.

[9] On this appeal, the appellant submits that:

- (a) The Deputy Judge's decision to strike out her claim was unreasonable
- (b) The Deputy Judge wrongly refused to transfer her claim to the assessment office
- (c) One lawyer for ALPC, Filip Pejovic, lied in his affidavit submitted on this motion
- (d) Counsel for the respondents, Brett Hughes, made false accusations about the appellant
- (e) ALPC's invoice overcharged her for legal services by fraudulently billing her for work before the retainer commenced, after the retainer ended, work not performed during the retainer, and for work performed by legal staff whom she did not retain

### **Standard of Review**

[10] On an appeal from the Small Claims Court the appellate standard of review applies. Thus, the standard of review is correctness for errors of law and palpable and overriding error for factual errors or errors of mixed fact and law, except where they reveal an error in principle: *Levitt Sheikh Chaudhri Swann LLP v. Third Eye Insights Inc.*, 2025 ONSC 1754 (Div. Ct.), at para. 3.

**Does the Small Claims Court have Jurisdiction over a Dispute about Legal Fees?**

[11] The Deputy Judge stated:

I find that the following decision in [*Zeppieri & Associates v. Gupta*, 2016 ONSC 6491] ... is binding on this Court. At paragraph 22 of that decision, the Court makes clear that the Small Claims Court has no jurisdiction to reduce or adjust the lawyer's bill. Since the fees charged by the defendants are the sole issue to be determined in this lawsuit, this Court has no jurisdiction to hear this case. It would be a waste of time for the matter to proceed in the Small Claims Court. The plaintiff's claim is therefore struck under Rule 12.021A and C, as it discloses no reasonable cause of action and is a waste of time. ...

[12] In *Zeppieri*, Dunphy J. stated at para. 22:

.... The *Solicitors Act* is fundamentally a consumer protection statute and not a monopoly protection statute. The monopoly granted to solicitors comes with heavy responsibilities. Among these are the right of clients to refer bills to assessment if the client is of the view that the amount charged is not fair and reasonable having regard to all of the circumstances. The Small Claims Court has no jurisdiction to reduce or adjust a bill in the way an assessment officer or judge can (barring agreement of all parties at least).

[13] This view remains good law.

[14] The appellant's claim in the Small Claims Court seeks the return of the entire amount she paid for the respondents' services on the basis that she was overcharged. In essence, the appellants' claim asks the Small Claims Court to reduce the respondents' account and thus is not within the jurisdiction of the Small Claims Court. Accordingly, the Small Claims Court does not have jurisdiction to determine the appellant's claim. The Deputy Judge did not err in striking the appellant's claim.

**Does the Small Claims Court have Jurisdiction to Transfer this Claim to the Superior Court's Assessment Office?**

[15] The appellant's request to transfer her Small Claims Court claim to the Assessment Office. Deputy Judge Vicars stated that the Small Claims Court does not have authority to do so.

[16] Section 110 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 states:

Proceeding in wrong forum

110 (1) Where a proceeding or a step in a proceeding is brought or taken before the wrong court, judge or officer, it may be transferred or adjourned to the proper court, judge or officer.

### Continuation of proceeding

(2) A proceeding that is transferred to another court under subsection (1) shall be titled in the court to which it is transferred and shall be continued as if it had been commenced in that court.

[17] In *McTague Law Firm LLP v James*, 2023 CanLII 32147 (Ont. Small Cl. Ct.), Deputy Judge James Branoff held that the Small Claims Court has the jurisdiction to transfer a matter to an Assessment Officer of the Superior Court and stated, at p. 12:

The issue now becomes, how to affect a transfer to an Assessment Officer? Section 110 of the *Courts of Justice Act* does not make any distinction between the Small Claims Court and the Superior Court of Justice. It simply states, “court, judge or officer”. Which I am of the opinion, includes the Small Claims Court.

The issue of a transfer by Small Claims Court to the Superior Court was considered in, *Castle v Toronto Harbour Commissioners* (1987), 20 C.P.C. (2d) 266, Toronto Small Claims Court. In this case, the Small Claims Court recognized that it did not have jurisdiction to hear a matter involving negligence which occurred on navigable inland waters. The matter was a matter of maritime law and arising out of navigation and shipping. The Small Claims Court transferred the matter to the Supreme Court of Ontario, now the Superior Court of Justice. [Emphasis in original removed.]

[18] This is a sensible approach so long as it would not result in the client avoiding a limitation imposed by the *Solicitors Act*. For instance, s. 4(1) of the *Solicitors Act* permits a client to apply to have their lawyer’s bill assessed within 12 months of its delivery without leave, but after 12 months, or after payment, “special circumstances” must be shown. However, given that the appellant has paid the account, I find that the Deputy Judge did not err in refusing to transfer the claim.

### Other Issues

[19] The focus of the appellant’s submissions is that the respondents’ lawyers lied in the materials that they placed before the Small Claims Court and that the Deputy Judge erred in allegedly not listening to these submissions. It was appropriate for the Deputy Judge not to address these allegations given that the Small Claims Court did not have jurisdiction over this matter. I will not comment on these allegations as they are for an Assessment Officer to determine if the appellant seeks an assessment to challenge the amount of fees charged by the respondents and is granted leave to do so.

**Costs**

[20] I find that it is fair and reasonable to grant the respondents their costs of \$2,339.10, inclusive, on a partial indemnity basis as requested.

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M.D. Faieta J.

**RELEASED:** October 23, 2025