

COURT OF APPEAL FOR ONTARIO

CITATION: Powell v. Ledroit Sabo Litigation, 2026 ONCA 68

DATE: 20260204

DOCKET: M56205 (COA-25-CV-0542)

Roberts, Miller and Monahan JJ.A.

BETWEEN

Todd Powell, Tracy Powell, Joseph Carapella, 1307839
Ontario Ltd. and Tricar Developments Inc.

Applicants (Respondents/Moving Parties)

and

Ledroit Sabo Litigation and Paul Ledroit

Respondents (Appellants/Responding Parties)

Scott Turton, for the moving parties

Ondrej Sabo, for the responding parties

Heard: November 12, 2025

Roberts J.A.:

A. OVERVIEW AND BACKGROUND

[1] This appeal concerns the determination of the correct appeal route from the Superior Court for a final order for a single payment in respect of a solicitor and client costs assessment.

[2] Per the request of the moving party clients, an assessment officer assessed the accounts of their former solicitors, the responding parties. The assessment officer reduced the responding parties' accounts from \$105,883.50 to \$50,000. Prior to the assessment, the moving parties had paid \$24,453.86. As a result of the assessment, the moving parties were required to pay a further \$25,546.14 to the responding parties.

[3] The responding parties moved to oppose confirmation of the report of the assessment officer before a judge of the Superior Court of Justice. The motion judge dismissed the responding parties' motion and confirmed the assessment officer's certificate of assessment.

[4] The moving parties seek to quash the appeal of the responding parties. They argue that the responding parties' appeal lies to the Divisional Court because the assessed amount ordered to be paid and confirmed on motion to the Superior Court of Justice is within the Divisional Court's monetary jurisdiction of \$50,000.

[5] The responding parties maintain that assessments of solicitors' accounts are materially different from civil damages and that the route of appeal is determined by looking at the differential of \$55,883.50 between the amount of their accounts and the assessed amount.

[6] For the reasons that follow, I would allow the motion to quash. This appeal concerns a final order of a judge of the Superior Court for a single payment in the amount of \$25,546.14. As such, the appeal lies to the Divisional Court.

B. ANALYSIS

i. Statutory framework

[7] It is helpful to start with the assessment procedure that applies and was followed in this case. I will then turn to the prescribed appeal route provisions under the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “CJA”). Finally, I will explain how these provisions work together.

a. Costs assessment procedure

[8] The costs assessment procedure is set out in the *Solicitors Act*, R.S.O. 1990, c. S.15. This court recently granted leave in *Nakano v. Cohen Highley LLP*, (January 16, 2025), Toronto, COA-25-OM-0255 (Ont. C.A.), on the issue of “the proper procedure for challenging an [a]ssessment [o]fficer’s report in a solicitor-client assessment under the *Solicitors Act*”, including whether the objections procedure under r. 58 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, applies to solicitor-client assessments under the *Solicitors Act*. This issue is not relevant on this appeal. Accordingly, it is only necessary to note the following procedural steps to provide context for this appeal.

[9] If, as is the case here, the retainer between the solicitor and client is not in dispute and there are no special circumstances, the client or solicitor can seek an order for assessment of the solicitor's bill per s. 3 of the *Solicitors Act*. An assessment officer typically conducts the assessment. Section 6(5) of the *Solicitors Act* provides that the amount certified to be due shall be paid forthwith after confirmation of certificate in the same manner as confirmation of a referee's report under the *Rules of Civil Procedure*. If a party opposes confirmation of the certificate, s. 6(9) provides that a motion to oppose confirmation shall be made to a judge of the Superior Court of Justice. A judge of the Superior Court makes a final order allowing or dismissing the motion to oppose confirmation of the assessment certificate.

b. Appeal route from a final order for a single payment by a judge of the Superior Court of Justice

[10] The appeal route for appeals from a final order of a single judge of the Superior Court for a single payment in solicitor and client assessment proceedings is determined by ss. 6(1) and 19(1)(a) of the *CJA*.

[11] For the purposes of this motion to quash, the relevant provision of s. 6(1) of the *CJA* is s. 6(1)(b), which stipulates that an appeal lies to the Court of Appeal from,

a final order of a judge of the Superior Court of Justice, except

(i) an order referred to in clause 19(1)(a) [of the *CJA*];

[12] Section 19(1)(a) of the *CJA* reads as follows:

An appeal lies to the Divisional Court from,

a final order of a judge of the Superior Court of Justice, as described in subsection[] ...(1.2);

[13] Section 19(1.2)(a) provides the following:

If the notice of appeal is filed on or after October 1, 2007, clause (1)(a) applies in respect of a final order,

for a single payment of not more than \$50,000 exclusive of costs;

[14] Stated simply, for the purposes of this motion, an appeal will lie to the Court of Appeal if the order under appeal is a final order of a judge of the Superior Court unless it is for a single payment of not more than \$50,000 exclusive of costs.

[15] There is no dispute that for the purpose of determining the correct appeal route in this case, we are dealing with the final order of a judge of the Superior Court, resulting in a single payment of money. As such, the next step in the analysis must determine whether the final order falls under the exceptions stipulated in s. 19(1)(a) and (1.2)(a). Specifically, whether the amount of the single payment is:

- (i) \$50,000 or less, exclusive of costs, in which case the appeal lies to the Divisional Court under s. 19(1)(a) and (1.2)(a); or

- (ii) greater than \$50,000, exclusive of costs, in which case the appeal lies to the Court of Appeal under s. 6(1)(b).

[16] It is important to emphasize that the circumstances in this case concern only the question of the appeal from a final order of a Superior Court judge for a single payment. Accordingly, it is only the specific provisions under ss. 6(1)(b)(i) and 19(1)(a) and (1.2)(a) of the *CJA* that are relevant for the analysis. However, as I highlight in some of the cases referenced below, where the Superior Court judge's final order includes other provisions of a final nature in addition to a single payment, such that the appeal route lies to the Court of Appeal.

c. Principles applied

[17] How do these appeal provisions apply to an assessment of costs?

[18] Where a party contests an assessment certificate, the final order of the judge dismisses or allows the opposing party's motion and confirms or alters the assessment certificate. In other words, the final order of the Superior Court judge confirms the correct amount of the solicitor's account and what amounts may remain payable to the solicitor or repayable to the client, as the case may be. It is therefore the final order of the Superior Court that determines the amount of the single payment for the purposes of the appeal route.

[19] The final order of the Superior Court judge can cause three outcomes:

- (1) **The single payment of money by the clients to the solicitors.** For example, the assessment officer reduces the solicitors' unpaid account of \$100,000 to \$25,000. The final order of a judge of the Superior Court confirms the assessment certificate without alteration and dismisses the objection motion. The effect of the final order is to confirm that \$25,000 is the correct amount of the solicitors' account and is payable by the clients. The appeal of that order for a single payment lies to the Divisional Court. If, conversely, the judge grants the objection motion and increases the amount payable by the clients to an amount greater than \$50,000, say \$75,000, the appeal lies to the Court of Appeal because the single payment confirmed to be payable is greater than \$50,000.
- (2) **The single payment of money by the solicitors to the clients, as a refund for monies overpaid by the clients.** For example, the assessment officer assesses the solicitors' accounts, which the clients have already paid, at \$100,000. The final order of a judge of the Superior Court reduces that amount to \$50,000. This results in the order for a single payment to the clients of \$50,000. The appeal lies to the Divisional Court. If, on the other hand, the assessed amount is reduced by \$40,000 by the final order of a judge of the Superior Court,

this results in the order of a single payment of \$60,000 to the clients.

The appeal then lies to the Court of Appeal.

- (3) **The payment of no further monies, where the clients have already paid the amount as confirmed or determined by the motion judge.** For example, the assessed amount already paid by the clients is \$50,000. The final order of a judge of the Superior Court confirms the \$50,000 amount without any alteration. The final order is effectively an order for \$0, and the appeal lies to the Divisional Court. To the same result, if the assessed amount already paid by the clients is \$100,000 and the final order of the Superior Court confirms that amount without alteration, the final order is effectively an order for \$0 and the appeal still lies to the Divisional Court.

[20] This approach to the determination of the appeal route for an assessment appeal provides clarity because it coincides with the determination of the appeal route in any civil proceeding where the appeal is from a final order of a judge of the Superior Court for a single payment. Where the order under appeal amounts to a single payment or where damages claimed have been assessed at zero dollars, it is typically the amount ordered to be paid rather than the amount claimed that is determinative of the appeal route: *Chavdarova v. The Staffing Exchange Inc.*, 2018 ONCA 744, at para. 1; *Saleh v. Nebel*, 2016 ONCA 948, at para. 5; *Sandu v. Fairmont Hotels Inc.*, 2015 ONCA 611, at para. 4; *Harte-Eichmanis v.*

Fernandes, 2012 ONCA 266, 15 R.F.L. (7th), at paras. 14 and 16. As this court clarified in *McGrath v. Woodrow* (2001), 52 O.R. (3d) 732 (C.A.), at para. 16:

The pivotal concept in subclause [19(1)(a) and 19(1.2)(a)] is the amount of the judgment. It is not the amount claimed in the action or counterclaim. It is not the amount "involved" in the appeal or "in issue" in the appeal. Jurisdiction under subclause [19(1)(a)] turns on the amount of the payment ordered by the judgment sought to be appealed.

[21] The responding parties rely on *Newell v. Sax*, 2019 ONCA 455, 43 C.P.C. (8th) 217, in support of their argument that the appeal route should be determined by the difference between the original amount of the solicitor's accounts and the assessed amount as confirmed by the motion judge. I am not persuaded that *Newell* supports that argument. First, as noted above in the passage from *McGrath*, it is not the amount in issue on the appeal that determines the appeal route, but the amount of payment ordered. Second, *Newell* involved a reduction of the assessment certificate by a judge of the Superior Court from \$149,635.52 to \$26,375. The client had already paid the solicitor a total of \$187,044.40 in respect of the account. As a result, the final order by the judge of the Superior Court amounted to an order for the solicitor to refund the client \$160,669.40. In other words, this was a final order for a single payment of \$160,669.40. This order exceeded the monetary jurisdiction of the Divisional Court, and the appeal lay properly to this court.

[22] While there are a few outlier decisions that do not address appellate jurisdiction,¹ the jurisprudence from this court is generally consistent with this approach to the appeal route. For example, in *Evans, Sweeny Bordin LLP v. Zawadski*, 2015 ONCA 756, 127 O.R. (3d) 510, the assessment officer reduced the solicitors' accounts of approximately \$800,000 (which included a \$500,000 bonus) to \$268,354.13. The motion judge of the Superior Court allowed the \$500,000 bonus. The clients had already paid \$4,691.86. As the single payment ordered was for more than \$50,000, the appeal lay properly to this court.

[23] Similarly, in *Ares Law Professional Corporation v. Rock*, 2017 ONCA 569, this court heard an appeal from a motion judge's order confirming a certificate of assessment and ordering judgment in the amount of \$125,602.83 in favour of the solicitors. In that case, the original amount of the solicitors' account was \$139,302.52, but the assessment officer made some small adjustments and ultimately assessed the outstanding amount at \$125,602.83. The motion judge confirmed this amount. The single payment ordered was therefore for more than \$50,000 and the appeal lay to this court.

¹ For example, in *Adair Morse LLP v. Charron*, 2023 ONCA 761, the solicitors' fully paid account totalling \$473,017.60 was reduced on assessment to \$329,617.16. The solicitors challenged the reduction and the motion judge found the assessment officer had made reversible errors, including by reducing the account by \$30,000 for the solicitors' failure to seek costs at the Supreme Court and by approximately \$95,000 for disallowed annual increases in the solicitors' hourly rates. While it appears that the appeal may have fallen within the monetary jurisdiction of the Divisional Court, the issue of jurisdiction was not raised or decided and thus cannot be relied upon to establish the jurisdiction of this court in a subsequent appeal: see *CIBC Mortgages Inc. (FirstLine Mortgages) v. Computershare Trust Co. of Canada*, 2015 ONCA 846, 342 O.A.C. 49, at para. 12; *Heegsma v. Hamilton (City)*, 2024 ONCA 865, 174 O.R. (3d) 793, at para. 23.

[24] At first glance, *Bales Beall LLP v. Fingrut*, 2013 ONCA 266, appears to be inconsistent with the approach set out above. In that case, the solicitors' account of \$224,757.28 was reduced to \$101,111 on assessment. The motion judge confirmed that the solicitors' account was \$202,822.28. As the client had already paid \$190,000, the client owed the solicitors \$12,822.28. Importantly, however, the motion judge also determined that the assessment officer exceeded her jurisdiction in interpreting the parties' contingency fee agreement. The appeal from the final order was heard and dismissed by this court. This court did not address the issue of jurisdiction. However, the final order of the motion judge was not solely for a single payment but also determined the issue of the validity of the parties' contingency agreement. The appeal therefore lay to this court under s. 6(1)(b).

[25] *Raphael Partners v. Lam* (2002), 61 O.R. (3d) 417 (C.A.), was similarly properly before this court because the final order of the motion judge did more than simply determine the correct amount of the solicitors' account. Although jurisdiction was also not canvassed in that case, the motion judge had declined to enforce a fee arrangement after she concluded it was unreasonable. As her order was not solely for a single payment, the appeal lay to this court.

[26] *Charleston Partners v. Dickinson*, [1996] O.J. No. 1552 (C.A.), is another case that seems to be an outlier because the court entertained an appeal from an order in which costs were assessed at \$8,774. In that case, however, the appeal was properly brought before this court under s. 6(1)(c) of the *Courts of Justice Act*,

which provides that an appeal lies to the Court of Appeal from “a certificate of assessment of costs issued in a proceeding in the Court of Appeal”. As the appellant was appealing a certificate issued in proceedings in this court, s. 6(1)(c) applied and her appeal lay to this court.

[27] Consistent with the approach I have set out above, the Divisional Court generally appears to have looked to the amount payable to determine jurisdiction to hear appeals, in cases resulting in payments by both solicitors and clients. For example:

- (1) In *Cao v. Monkhouse Law Professional Corp.*, 2021 ONSC 7894 (Div. Ct.), leave to appeal to Ont. C.A. refused, M53416 (December 19, 2022), the client appealed from a motion judge’s assessment of the solicitors’ account on a motion to oppose confirmation of the assessment report. The account was originally submitted in the amount of \$93,108.30, of which \$395.50 had been paid. The assessment officer reduced the account to \$60,191. The motion judge further reduced the solicitors’ account, fixing it at \$45,000. The Divisional Court held at para. 5 of its reasons that it had jurisdiction to hear the appeal pursuant to s. 19(1.2) of the CJA, “since the order is a final order in a civil proceeding where the monetary award is less than \$50,000”.

- (2) In *Schwisberg v. Kennedy*, [2006] O.J. No. 1224 (Div. Ct.), the solicitors had withdrawn \$50,000 from trust funds to pay their \$60,954.22 account. The client sought an assessment of the solicitors' account, which was reduced to \$43,935.92, leaving \$6,291.44 due to the clients. The court noted that the solicitors had appealed under s. 19(1)(a)(i) of the Courts of Justice Act.
- (3) In *RZCD Law Firm LLP v. Williams*, 2016 ONSC 2122, 348 O.A.C. 89 (Div. Ct.), leave to appeal to Ont. C.A. refused, M46390 (July 8, 2016), the Divisional Court heard an appeal where the assessment officer ordered a \$24,000 refund on an \$89,000 bill, and the motion judge reduced the assessment certificate and set a refund of \$11,711.83.
- (4) In *1395804 Ontario Ltd. (Blacklock's Reporter) v. Hameed*, 2024 ONSC 2797 (Div. Ct.), the Divisional Court heard an appeal of an order of the motion judge affirming the assessment officer's assessment of \$45,000.00, reduced from an original unpaid account of \$83,581.63.
- (5) In *Nakano v. Cohen Highley LLP*, 2025 ONSC 3147 (Div. Ct.), leave to appeal to Ont. C.A. granted, COA-25-OM-0255 (January 16, 2025), the Divisional Court heard an appeal from a motion judge's order affirming fees of \$80,000, reduced from \$110,164.81. As the client

had already paid the solicitor \$102,343.10, the amount to be refunded to the client fell within the Divisional Court's jurisdiction.

[28] On initial view, *Speciale Law Professional Corporation v. Shrader Canada Limited*, 2017 ONSC 3613 (Div. Ct.), leave to appeal to Ont. C.A. refused, M48104 (January 19, 2018), appears inconsistent with the approach I have discussed, but a closer examination of the case confirms the Divisional Court rightly exercised jurisdiction in that case. In *Speciale*, the client sought an assessment of the solicitor's accounts totalling more than \$1 million, all of which were paid. The assessment officer reduced the accounts to \$325,789.01, but the motion judge refused to confirm the assessment officer's report and certificate and referred the assessment for a new hearing before another assessment officer. The client appealed, with leave, to the Divisional Court. As the motion judge's order appears to have been characterized as an interlocutory order, the Divisional Court correctly assumed jurisdiction in that case: see *Singh v. Heft*, 2022 ONCA 135, at para. 14.

[29] In summary, in assessment proceedings, it is the amount of the single payment ordered on review by a single judge of the Superior Court that governs the appropriate appeal route. Stated otherwise, jurisdiction depends on the amount that remains payable to the solicitor or repayable to the client after accounting for any payments already made.

ii. What is the final order for a single payment by the judge of the Superior Court in the present case?

[30] The final order of the Superior Court of Justice in issue here is the March 19, 2025 order of L.B. Stewart J., confirming the assessment certificate in the amount of \$50,000. The order provides that the solicitors' motion to oppose confirmation of the assessment certificate is dismissed with costs of \$8,000. While the order under appeal does not expressly fix the amount, it confirms that the \$50,000 assessed under the assessment certificate is payable. Since the moving parties have already paid \$24,453.86, they are required to pay the responding parties a further \$25,546.14. The final order under appeal is therefore for "a single payment of not more than \$50,000 exclusive of costs." The appeal correctly lies to the Divisional Court.

C. DISPOSITION

[31] For these reasons, I conclude that the responding parties' appeal in the present case lies to the Divisional Court.

[32] This appears to be the first time that this court has been expressly asked to determine the question of jurisdiction for an assessment appeal.² Given the

² The jurisdictional issue in this case is distinguishable from the jurisdictional issue in *Newell v. Sax* (January 8, 2019), Toronto, M49705 (Ont. C.A.). In *Newell*, this court heard and dismissed a motion to quash an appeal on the ground that s. 133(b) of the *CJA* applied to a motion judge's order setting aside an assessment officer's report and certificate and reducing the solicitors' account. The jurisdictional issue on that motion – namely, whether leave to appeal was required because the appeal was only as to costs that were in the discretion of the court – is markedly different from the jurisdictional issue in this case.

apparent novelty of this issue, it was reasonable for the responding parties to have commenced their appeal in this court.

[33] The responding parties request that the appeal be transferred to the Divisional Court under s. 110(1) of the *CJA*. In my view, it is just to do so. The responding parties have an arguable appeal and there is no prejudice to the moving parties that cannot be compensated for by a costs award in this court.

[34] Accordingly, I would allow the motion to quash and transfer the responding parties' appeal to the Divisional Court.

[35] As agreed, I would allow the moving parties their costs of the motion to quash in the amount of \$4,500, inclusive of all amounts.

Released: February 4, 2026 "L.B.R."

"L.B. Roberts J.A."
"I agree. B.W. Miller J.A."
"I agree. P.J. Monahan J.A."