

CITATION: Sicotte Guilbault LLP v. Leading Practice SAS, 2026 ONSC 1327
COURT FILE NO.: CV-25-102265
DATE: 2026 03 05

ONTARIO SUPERIOR COURT OF JUSTICE

RE: SICOTTE GUILBAULT LLP, Applicant

AND:

LEADING PRACTICE SAS, Respondent

BEFORE: C. MacLeod RSJ

COUNSEL: Stephane Hutt and Yasmine Atif, for the Applicant law firm

No one appearing for the Respondent client

HEARD: January 19, 2026

DECISION AND REASONS

[1] This is an Application by the Sicotte Guilbault law firm to approve a contingency fee agreement, approve the fees and disbursements to be charged to the client as the result of termination of that agreement, and to permit the firm to deduct the amount owing from certain funds held in trust.

[2] This was also the hearing of a motion removing certain lawyers at the firm as counsel of record in an action between the client (Leading Practice SAS) and the Attorney General of Canada, court file no CV-19-79258. By order of Associate Justice Perron, the motion was to be heard in conjunction with the application.

[3] The order made by Perron AJ also set out a timetable for filing of materials. The Respondent did not file materials and did not attend court on the date of the hearing. No formal request had been made by the Respondent to appear virtually. The only material the court had available on behalf of the Respondent was an affidavit filed in response to the original motion to get off the record. In that affidavit, the client opposed an order permitting its counsel to withdraw and denied there was a breakdown in the relationship.

I. Motion to get off the Record

[4] Dealing firstly with the motion, and without disclosing the privileged information contained in the unredacted affidavit provided to the court, it is clear that the relationship has broken down. In his affidavit material, the client is highly critical of the lack of preparation, lack of capacity of the law firm and the ethics of getting off the record which he regards as a “calculated

business exit” from the contingency model. There was also disagreement about litigation strategy, how to deal with an expert report and of “outsourcing” to another law firm.

[5] While the dispute became more profound after the law firm purported to bill the client and the client refused to pay the “disbursements”, it would nevertheless be inappropriate to force Sicotte Guilbeault LLP or the lawyers at the firm to represent the Respondent in its continuing litigation against the federal government.¹ The existence of a contingency fee agreement is not a bar to a lawyer moving to get off the record where representation of the client is no longer practical or appropriate.² The trial has already been adjourned.

[6] An order may issue in the form required by Rule 15 removing counsel and requiring the defendant to take appropriate steps. That order may issue forthwith.

II. Approval of Retainer Agreement and Approval of Accounts

[7] I turn now to the Application to approve the contingency fee retainer agreement, to approve the accounts, and to permit Sicotte Guilbeault to deduct payment from the “escrow fund” which is held in trust.

Background

[8] By way of background, the law firm has represented the Respondent since 2019. The Respondent is a Danish corporation controlled by Mark von Rosing, a resident of France. The law firm had been retained to sue the federal government on behalf of the Respondent and on February 8, 2019 issued a statement of claim in this matter seeking damages of more than ninety-nine million dollars. The action had progressed and was listed for trial on the 2025 civil trial blitz here in Ottawa. As noted above, the matter was removed from the trial list by the court in light of the disagreement giving rise to the motion to get off the record and because, in the view of the court, the matter was not ready for trial.

[9] The law firm had agreed to provide legal representation pursuant to a contingency fee retainer agreement dated January 22, 2019. It was signed on behalf of the corporation by Mark von Rosing who also signed as guarantor. Under the terms of the retainer, Sicotte, Guilbault was to receive 40% of a judgment or settlement and would otherwise fund the litigation. As Mr. Van Rosing sets out in his affidavit, the client was to reimburse the law firm for agreed upon disbursements. If no award or settlement was achieved, the retainer provided that the client would pay no fee and its liability would be limited to paying the disbursements.

[10] At paragraph 15 of the retainer agreement, it was agreed that “should the client choose to change legal representation or otherwise terminate this contingency agreement”, legal fees calculated on the basis of certain specified hourly rates (ranging from \$100 / hour for a law clerk to \$600 / hour for Mr. Sicotte) would be “immediately due and payable”.

¹ *Brown v. Williams*, 2023 ONCA 730 (CanLII)

² *Gluckstein Personal Injury Lawyers v. Verlaan-Cole*, 2019 ONSC 6648 (CanLII)

[11] On January 1, 2022 the law firm and the client entered into a separate agreement entitled “Escrow Agent Retainer Agreement”. Under that agreement, Denis Sicotte agreed to act as an Escrow Agent and the firm was entitled to certain “fees for escrow agent services” based on the value of the cumulative transactions in each calendar year. The escrow services were said to be separate and apart from any legal services.

[12] At some point, Sicotte Guilbault decided to retain Smart & Biggar as co-counsel and to treat the invoices from that law firm as disbursements. The client was unhappy when he was billed on an hourly basis for what appeared to be outsourcing of services to a firm that billed hourly when he had retained Sicotte Guilbault on a contingency basis. That and other disagreements about experts and litigation strategy gave rise to the breakdown in the relationship between the law firm and the client. The client declined to pay the disbursement invoices which by that time exceeded \$150,000.

[13] On August 11 & 12, 2025 Mr. Morin-Pelletier (who had carriage of the matter) advised the client that the firm would be getting off the record and advised Mr. Von Rosing to retain Smart & Biggar. He also advised the client that:

“Given that our mandate has been terminated as a result of the breakdown of the solicitor-client relationship, we will be submitting as soon as possible our account for our fees and disbursements respecting our services rendered in accordance with the terms of our retainer agreement.”

[14] In September of 2025, the client requested the termination of the escrow agreement and the return of the escrow funds 635,000 Euros (in excess of \$1,000,000). On September 19, 2025 Stephane Hutt wrote to the client on behalf of the firm enclosing its invoices for fees and disbursements in the total amount of \$938,020.71. Although most of this amount consists of legal fees calculated at the various hourly rates, some is for escrow services and interest as well as the disbursements relating to the litigation.

Analysis

[15] Bearing in mind that this Application now appears to be uncontested, the court is nevertheless required to bring scrutiny to bear on the matter. There would otherwise be no need for court approval.

[16] In this case it is the law firm that has decided to terminate the retainer. I have found that it is entitled to do so because of the lack of confidence expressed by the client and because of a disagreement over both litigation strategy and financing. Still, the optics of firing the client, issuing bills totalling almost the entire amount held in the escrow fund and seizing the fund to pay those bills is on the face of it somewhat troubling.

[17] There is another issue. It is questionable whether the fees billed for “escrow services” are legal fees. The escrow agreement appears to distinguish escrow services from legal representation and the funds appear to be held in a separate Euro denominated account rather than the firm’s mixed trust account.

[18] The escrow agreement contains the following terms:

5. Excluded Services. This Escrow Retainer does not cover any representation and services rendered by other legal professionals and other staff of Sicotte Guilbault LLP. Any such representation may be subject to a separate retainer agreement between Sicotte Guilbault LLP

and you, the terms of which are to be agreed by you, in writing, before commencement of any work.

6. GST/HST. The Escrow Agent fees payable under this retainer are not subject to Canadian HST/GST.

9. Termination of this Escrow Retainer by Denis Sicotte/Sicotte Guilbault LLP. Denis Sicotte/Sicotte Guilbault LLP may terminate this Escrow Retainer Agreement by giving written notice to you to that effect, for any reason subject to our professional and ethical obligations, including as a result of conflicts of interest that arise or unpaid legal fees. In the event of termination of this Escrow Retainer Agreement by Denis Sicotte/Sicotte Guilbault LLP, the parties agree that all of the amounts owing to Denis Sicotte/D M Sicotte Professional Corporation and Sicotte Guilbault LLP as of the date of termination shall be due and payable in full as of date of termination. From the date of such termination, interest shall continue to accrue on all amounts owing at the rate of ONE and ONE-HALF (1.5%) percent per month on all amounts then due, including interest on accrued interest (compounded interest), until paid in full.

10. Termination of this Escrow Retainer by LEAD. LEAD may terminate the representation under this Escrow Retainer by giving written notice to us to that effect, for any reason whatsoever. In the event of termination of this engagement by LEAD, the parties agree that all of the amounts owing to Sicotte Guilbault LLP pursuant to this Escrow Retainer Agreement as of the date of termination shall be due and payable in full as of date of termination.

[19] While a contract claim under this escrow agreement would be justiciable in this court, it does not appear to me that the fees for escrow services are subject to the special regime established by the *Solicitor's Act*. I am neither convinced that the escrow agreement should be treated as a retainer for legal services nor that it can be assessed or approved by the court under the Act.

[20] As for the contingency fee agreement, it seems largely unobjectionable on its face. The proposed contingency of 40% of the recovery might or might not have been approved by the court but the basis for the contingency and the allocation of risk under the agreement is clearly spelled out. Such agreements are now required to comply with a model agreement on the Law Society web site. That regulation was not in force when the agreement was made but the agreement largely

complies with the content requirements set out in s. 7 (2) of the Regulation.³ There is, however, a glaring omission.

[21] The retainer agreement does not contain a provision stating the circumstances under which the law firm has the right to terminate the retainer and the consequences of doing so as required by s. 7 (2) (7) of the regulation. That provision in its current form came into force on January 1, 2022 but there was a similar if less specific requirement in the previous regulation.⁴ In any event, the termination of the retainer by the solicitor because of a breakdown in confidence and failure to pay accounts cannot be interpreted as the client firing the law firm.

[22] As noted earlier, the retainer as signed contained a specific provision permitting the firm to bill its fees at hourly rates if the client changes lawyers or terminates the agreement. Additionally, there is a provision that allows the firm to increase the rates if the client contacts the office excessively, acts or fails to act, to increase the complexity of the matter or the time required. There is no suggestion that the latter provision has any impact. The firm now purports to charge fees based on the hourly rates set out in the agreement.

[23] Since the agreement is silent about what happens if the lawyer withdraws from the contingency agreement and since in any event, the firm is not seeking to recover a contingent amount, the real question is simply whether or not the fees Sicotte Guilbeault proposes to charge are justified. It is not necessary for the court to approve the agreement or to determine if the proposed contingency is fair. There is no doubt that the client retained the law firm and there is similarly no doubt that the law firm is entitled to reasonable compensation for the work done by the firm. The quoted hourly rates were said to apply if the client terminated the retainer. The agreement did not clearly bind the client to pay those rates if the lawyer withdrew from the agreement. The quoted fees were also subject to adjustment. The fact that hourly rates were quoted is relevant but not determinative of what is reasonable.

[24] I would not approve the contingency fee agreement as such under these circumstances. Nor would I simply enforce the hourly rates set out as applying if the client terminates the retainer. Under the circumstances, I would grant the alternative relief requested by the applicant at paragraph 89 of the factum. That is, I would find that the firm was retained to provide legal services in the litigation against the Crown and I would direct that the accounts for legal services including fees, charges, disbursements and interest be “assessed in the ordinary manner”.

[25] It would be reasonable for the accounts to be assessed because the court did not hear detailed evidence about the hours spent, who did what work or whether the hourly rates were reasonable. I have not been provided with detailed docket entries or affidavit evidence detailing the work done, the value of the work and the specific calculation of the proposed fees. In addition, there was a considerable amount of work done by Smart & Biggar and those accounts are charged as disbursements. It will be necessary to review those accounts to ensure there is no double billing.

³ See Ontario Regulation 563/20 as amended, in force July 1, 2021, s. 7 made pursuant to s. 28.1(12) of the *Solicitor's Act*, RSO 1990, c. S.15 as amended

⁴ See O.Reg. 195/04 now repealed, s. 2 (9)

[26] An Assessment Officer is in the best position to review these accounts and to hear the necessary evidence. I agree with counsel for the Applicant that a solicitor who obtains leave to withdraw from representing a client in litigation is “incapable of acting” within the meaning of s. 29 of the Act. If that is incorrect, it is still within my discretion to order Assessment of any account for legal services covered by the Act.

[27] The assessment will not apply to the outstanding fees for escrow agent services. Those, as I have said, are not structured as legal services. Amongst other factors, those services were said not to be subject to HST. HST applies to legal and accounting services. Sicotte Guilbeault is free to sue for those fees in Small Claims Court should that be necessary.

[28] As I said above, I am conscious that the client did not file materials on the Application (although he had filed an affidavit in opposition to the motion to remove counsel from the record) and he did not appear at the hearing. Nevertheless, I am not prepared to provide a blank cheque or simply rubber stamp the accounts as submitted. Sicotte Guilbeault shall obtain and serve a requisition for assessment within 30 days. The client may then choose whether to appear before the Assessment Officer or to permit the assessment to proceed on an uncontested basis.

[29] Sicotte Guilbeault will be entitled to continue to hold the funds in trust pending the outcome of the assessment. It would make no sense to return the funds to the client in France and then be forced to pursue a judgment in another jurisdiction. They should be placed in an interest bearing account or alternatively paid into court.

Summary and Conclusion

[30] In summary, an order will issue removing counsel for the plaintiff in court file CV-19-79258.

[31] I decline to approve the contingency fee agreement. I do find that the law firm was retained to pursue the litigation and is entitled to reasonable compensation for the work done on the file.

[32] The amount owing to Sicotte Guilbeault for representation in the litigation is referred for Assessment. The Applicant law firm shall initiate the assessment process within the next 30 days.

[33] In the interim, the law firm may continue to hold the funds in an interest bearing trust account pending the outcome of the assessment. Alternatively, they may pay the funds into court.

[34] The Applicant is entitled to costs of the motion and the Application which I fix at \$35,000.00. This amount may be paid out of the trust funds.

Justice C. MacLeod

Date: March 5, 2026