

CITATION: Clarke v. Mathews v. Gondosch and 1394536 Ontario Ltd., 2025 ONSC 1
COURT FILE NO.: CV-24-00182
DATE: 2025-01-02

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:)
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GORDON S. CLARKE) G. Clarke, Counsel for Gordon S. Clarke
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Moving Party)
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- and -)
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)
THOMAS MATHEWS AND THOMAS) J. Samac, Counsel for Thomas Mathews and
MATHEWS PROFESSIONAL) Thomas Mathews Professional Corporation
CORPORATION)
)
Responding Parties)
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- and -)
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)
MICHAEL GONDOSCH AND 1394536) K. King-Gill, Counsel for Michael Gondosch
ONTARIO LTD.) and 1394536 Ontario Ltd.
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Responding Parties)
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HEARD: November 20, 2024 and
December 3, 2024

2025 ONSC 1 (CanLII)

REASONS FOR JUDGMENT

The Honourable Justice M. Bordin

Overview

[1] Gordon Clarke (“Clarke”) wants to assess three accounts of Thomas Mathews Professional Corporation (“TMPC”). The accounts total approximately \$15,227.

[2] In his notice of motion, Clarke seeks an order for an extension of time to commence assessment of the accounts, an order for the assessment of the accounts, and directions as to the parties to the assessment and service of materials.

[3] In the draft order filed at the conclusion of the hearing Clarke seeks, among other relief, that the assessment of TMPC’s accounts be conducted by an assessment officer in Kitchener/Waterloo, that Michael Gondosch and 1394536 Ontario Ltd. (the “Gondosch Parties”) be made parties to the assessment, and that any amounts due to or from TMPC shall be to the credit of the Gondosch Parties subject to the outstanding assessment between Clarke and the Gondosch Parties.

[4] Clarke pleads and relies on ss. 3, 4 and 6 of the *Solicitors Act*, R.S.O. 1990, c. S.15.

[5] TMPC submits that the court should not exercise its discretion to allow the assessment because of Clarke’s conduct with respect to the accounts, the outstanding Small Claims Court action initiated by TMPC to collect the final account, and Clarke’s conduct in the Small Claims Court action and in this application.

Facts

[6] Clarke acted for the Gondosch Parties in civil proceedings involving Robert Gondosch (the “underlying litigation”). Robert Gondosch brought a motion to remove Clarke as lawyer of record for the Gondosch Parties in the underlying litigation (the “removal motion”).

[7] On or about May 2, 2022, Clarke and Mathews discussed the removal motion and Mathews assisting with the motion. Clarke deposes that Mathews provided an estimate for his fees of \$3,000 to \$4,000. Based on this estimate, Clarke recommended to his clients that Mathews be retained. Clarke concedes this was not communicated to Mathews. On May 3, 2022, Mathews wrote to Clarke that in his view he was only acting for Clarke. In a May 5, 2022 email to his client, Clarke

acknowledged that Mathews was acting for him alone. Clarke asked his client to send him the \$4,000 retainer for Mathews.

[8] The Representation Agreement signed by Clarke and Mathews on May 6, 2022, is a straightforward two-and-a-half half page document. It provides in part that:

- a. The retainer was limited to the removal motion;
- b. The Gondosch Parties were not Mathews' clients;
- c. TMPC would charge \$375 per hour plus HST for the work done by Mathews;
- d. Clarke was responsible for the listed disbursements;
- e. Clarke was to provide TMPC with a \$4,000 initial retainer;
- f. Clarke agreed to provide TMPC with such further sums from time to time as may be required by TMPC;
- g. Once the cash retainer was depleted, Clarke agreed to replenish it in such amount as requested by TMPC;
- h. Either party could terminate the retainer;
- i. The Representation Agreement contained the whole agreement between the parties regarding their relationship and legal fees and expenses and would not be changed unless agreed to in writing.

[9] The \$4,000 retainer was provided to Mathews on or about May 6, 2022.

[10] On June 16, 2022, Clarke emailed Mathews asking for an update on fees and "expectations" up to the hearing. Mathews responded that he had just over \$4,300 in work in progress and that fees could "easily go to \$7,500 plus". Clarke understood this to be a revised

estimate. Clarke indicated that he was having issues with costs and timing. Mathews responded that he could be patient with payment, within reason.

[11] On June 16, 2022, Clarke wrote to Mathews that he would not “guarantee all the costs” and speculated that it might be best for him to get off the record.

[12] On June 17, 2022, Clarke and Mathews spoke on the phone. Clarke deposes that during that call Mathews agreed and acknowledged that his fees could go as high \$8,600, that this estimate replaced the prior estimate, Mathews was prepared to wait for payment from the Gondosch Parties with no guarantee of funding from Clarke, and should they be successful on the removal motion with a costs order against Robert Gondosch, Mathews would be done and complete with that amount.

[13] Mathews denies that he ever provided any estimates. He denies agreeing that Clarke was not guaranteeing his fees. TMPC denies that the Representation Agreement was changed, either orally or in writing. Mathews indicated on court documents that he was acting on a limited-scope basis for Clarke on the removal motion.

[14] On June 20, 2022, Invoice No. 20143062 was issued by TMPC to Clarke. The \$4,000 held in trust was used to pay the account, leaving a balance of \$1,212.13.

[15] The removal motion was heard on July 28, 2022, before Smith J.

[16] On August 17, 2022, Mathews wrote to Clarke and asked whether Clarke’s clients had funds to pay and whether TMPC should invoice him for the work to date. Clarke suggested waiting until they were successful on the motion. On or about August 29, 2022, Clarke paid the outstanding balance on the first invoice.

[17] Clarke and Mathews met on September 28, 2022. Mathews advised Clarke that his outstanding fees were approximately \$10,800 before tax. Clarke asked for an account in the amount of \$2,500 plus tax. Invoice No. 20143233 was issued by TMPC to Clarke on September

28, 2022, in the amount of \$2,500 plus HST. It was paid on October 11, 2022. The last date of work done captured by the invoice was July 14, 2022.

[18] On October 27, 2022, Smith J. released his decision on the removal motion, ordering Clarke off the record for 1394536 Ontario Ltd. but allowing him to continue to represent Michael Gondosch. No costs were awarded. Smith J. recorded both Clarke and Mathews as lawyers for the Gondosch Parties on the motion.

[19] On January 24, 2023, TMPC sent Clarke Invoice No. 20143425 in the amount of \$7,190. Clarke advised that he would have the account assessed. Mathews told Clarke he could assess the account if he wished. After receiving an outstanding account reminder from TMPC on April 25, 2023, Clarke asked TMPC for consent to delay assessment to an unspecified date. TMPC refused. The account was not paid.

[20] Clarke issued his first account to Michael Gondosch on July 31, 2023.

[21] On August 2, 2023, TMPC issued a claim in the Small Claims Court seeking payment of Invoice No. 20143425, including interest, in the amount of \$8,393.53. In the statement of claim, TMPC pleads the terms of the Representation Agreement and the accounts rendered, that Clarke did not seek to have the accounts assessed, that Mathews did the work at the rates set out in the accounts, and that the account has not been paid.

[22] Mathews alleges that on August 8, 2023, Clarke improperly suggested the Law Society of Ontario would have to be involved because of Mathews' conduct.

[23] Mathews asserts that Clarke was evading service of the statement of claim and acting unreasonably in not accepting service. Clarke filed a defence dated August 29, 2023.

[24] In the statement of defence, Clarke asserts that the Small Claims Court does not have jurisdiction, that TMPC's accounts have not been assessed pursuant to the *Solicitors Act*, and that the Small Claims Court action should be dismissed or stayed pending conclusion of the underlying

litigation and an assessment under the *Solicitors Act*. The defence indicates that Clarke will be seeking an extension of time to commence the assessment.

[25] At some point Clarke brought a motion in the Small Claims Court to transfer the Small Claims Court action to the Superior Court. The motion was dismissed for want of jurisdiction.

[26] Michael Gondosch replaced Clarke as his lawyer of record in September 2023.

[27] Clarke issued his second account to Michael Gondosch on November 17, 2023. Only the final TMPC account was attached as a disbursement.

[28] A settlement conference was held in the Small Claims Court action on November 20, 2023. The action was directed to proceed to trial.

[29] Clarke obtained Orders for Assessment against Michael Gondosch on November 23, 2023, and December 18, 2023. The assessments have been rescheduled and have not yet been heard.

[30] On January 19, 2024, Clarke served his notice of motion seeking leave to assess TMPC's accounts, dictating a return date of January 31, 2024.

Issues raised by the application

[31] This application raises the following issues:

1. What is the limitation period for the assessment of the three accounts?
2. Should the accounts be assessed?
3. Who should determine the nature, scope, and effect of the Representation Agreement?
4. Is the recording and transcript of a phone call between Clarke and Mathews, without Mathews' consent, admissible?

5. Who should assess the accounts?
6. Should the Gondosch Parties be added as parties to any assessment ordered?

Limitation period for assessment of accounts

[32] I begin by repeating the words of the Nordheimer J. in the Divisional Court decision of *Gilbert's LLP v. David Dixon Inc.*, 2017 ONSC 1345, 137 O.R. (3d) 119, at para. 6:

This case raises an important procedural issue respecting the avenues of recourse that are available to a lawyer for the purpose of pursuing a client for payment of his/her fees. It involves a consideration of the *Solicitors Act*, and its various provisions that purport to address this issue. ...[T]he issue arises from the outdated and impractical processes contemplated by the *Solicitors Act* for the collection of legal accounts... The problem is further compounded by the confusing and problematic language used in the *Solicitors Act*, that renders any coherent understanding of the objectives of that statute virtually impossible.

[33] Almost eight years later, nothing has changed.

[34] Pursuant to s. 3 of the *Solicitors Act*, a client like Clarke may, where the retainer of the solicitor is not disputed and there are no special circumstances, obtain an order on requisition from a registrar of the Superior Court for the assessment of a bill already delivered, within one month of its delivery. Clarke brought this application outside the one-month period.

[35] Apart from s. 3, the remaining options for a client to attack a solicitor's bill (or for a solicitor to seek to enforce it) all involve an application to the court for a reference: *Cookish v. Paul Lee Associates Professional Corporation*, 2013 ONCA 278, at para. 22.

[36] Section 4 of the *Solicitors Act* provides in relevant part that no reference for an assessment shall be directed after twelve months from the time such bill was delivered except under special circumstances to be proved to the satisfaction of the judge to whom the application for reference is made. This would apply to the first two TMPC accounts, which were paid and delivered more than twelve months before this application.

[37] The current version of s. 11 of the *Solicitors Act* provides that the “payment of a bill does not preclude the court from referring it for assessment if the special circumstances of the case, in the opinion of the court, appear to require the assessment.” This applies to the first two accounts from TMPC.

[38] The following principles with respect to the limitation period for assessing accounts are taken from *Fellowes, McNeil* (1997), 34 O.R. (3d) 301 (Ont. C.A.):

- a. The *Solicitors Act* does not provide for the referral to assessment of unpaid accounts rendered between one and 12 months prior to the application. However, the court has an inherent jurisdiction to refer such accounts for assessment. In the usual circumstances, little is required for that jurisdiction to be exercised.
- b. Section 11 of the *Solicitors Act* permits referral to assessment of accounts paid less than 12 months prior to the application being made, where there are special circumstances [this refers to an earlier version of s. 11].
- c. The *Solicitors Act* makes no provision for the assessment of accounts paid more than 12 months before the application is made, and the inherent jurisdiction of the court to order the assessment of such accounts is limited to circumstances amounting to fraud or gross misconduct.

[39] The Court of Appeal for Ontario in *Shapiro, Cohen, Andrews, Finlayson v. Enterprise Rent-a-car Co.* (1998), 38 O.R. (3d) 257, at para. 8, adds the following with respect to when accounts may be assessed:

- i. upon requisition from the registrar, within 30 days of delivery (provided that there are no special circumstances and the retainer is not disputed). There is no distinction between paid and unpaid accounts (s. 3(b));

- ii. after 12 months of delivery, if special circumstances are shown. Again, there is no distinction between paid and unpaid accounts (s. 4).

[40] In *Guillemette v. Doucet*, 2007 ONCA 743, 88 O.R. (3d) 90, the Court of Appeal commented upon the amendment to s. 11 of the *Solicitors Act*, which deleted the requirement that the application for the assessment of a paid account be made within 12 months after payment:

Section 11 no longer imposes any time limit on the bringing of the application for an assessment of the paid accounts. The present s. 11, however, maintains the requirement that in all cases where the client seeks to assess paid accounts, the client must demonstrate “special circumstances”. The “special circumstances” requirement reflects the commonsense inference that payment of an account implies an acceptance of the reasonableness of the account: *Enterprise Rent-a-Car Co. v. Shapiro, Andrews, Finlayson*, supra, at p. 265 O.R., *Re Randell and Robins & Robins* (1979), 1979 CanLII 1921 (ON SC), 22 O.R. (2d) 642, [1979] O.J. No. 3451 (H.C.J.), at p. 643 O.R.

[41] As succinctly put by the Court of Appeal for Ontario in *Crosslink Bridge Corp. v. Fogler, Rubinoff LLP*, 2024 ONCA 230, at para. 7: “Unless special circumstances are established, s. 11 of the *Act* bars a reference for assessment where an account has been paid.”

[42] At para. 14 of *Crosslink Bridge Corp.*, the Court held that:

A client is not required to show special circumstances in order to obtain a referral for assessment of accounts that have been delivered more than one month but less than 12 months before an assessment is sought, and that remain unpaid. Rather, a judge of the Superior Court has discretion whether to exercise its inherent jurisdiction to order an assessment: *Fellowes*, at pp. 302-03; *Enterprise Rent-a-Car*, at pp. 260-61; *Re Reid and Goodman & Goodman* (1974) O.R. (2d) 447 (H.C.); *Bunt v. Assuras* (2003), 2003 CanLII 17952 (ON SC), 63 O.R. (3d) 622 (S.C.), at paras. 13 and 32; *Fiset v. Falconer*, 2005 CanLII 33783 (Ont. S.C.), at para. 34. In considering whether to exercise the discretion, a judge need only be satisfied that it is just and equitable that a reference for an assessment be made: *Bunt*, at para. 13. In *Fellowes*, this court held that, for unpaid accounts where assessment is sought between one and 12 months after the account

is delivered: “In the usual circumstances, little is required for that jurisdiction to be exercised” (at p. 303).

[43] The principles in para. 14 of *Crosslink* apply to the TMPC final account, which was unpaid and was rendered more than one month and less than 12 months before this application.

[44] If accounts are determined to be interim, it is the date of the final account that dictates the appropriate limitation period and the test for whether the accounts can be assessed: see *Shapiro, Cohen, Andrews, Finlayson*, at paras. 15-16; *Ling v. Naylor*, 1998 CarswellOnt 4870, [1998] O.J. No. 5263, 31 C.P.C. (4th) 223, at paras. 9-12, 16 and 19.

[45] It is a question of fact as to whether the prior accounts are, for the purposes of the limitation period for seeking assessment, to be treated as interim or final: *Fellowes, McNeil*, at para. 7; *Crosslink Bridge Corp.*, at para. 5.

[46] In submissions, TMPC conceded that the June 20, 2022, and September 28, 2022, accounts were interim accounts and the January 24, 2023 account was the final account. Even without this concession, I would have concluded that they were interim accounts.

[47] Although there are factors that suggest the accounts could have been interim or final, on balance, the factors weigh in favour of the accounts as interim accounts. All three accounts relate to one piece of litigation – the removal motion. The Representation Agreement signed by Clarke and Mathews concerns the removal motion and specifically refers to the rendering of interim accounts. The first two accounts encompass only a part of the work required on the removal motion. The second account included only some of the work done prior to the date of the account, as requested by Clarke. The work captured by the three accounts was done over a period of approximately three months. The evidence does not suggest that Clarke and Mathews believed the first two accounts to be final accounts.

[48] The June 20, 2022, and September 28, 2022, accounts are interim accounts. The effective date for the purpose of the limitation for assessment of those interim accounts is January 24, 2023,

the date of delivery of the final account. The interim accounts were paid. Therefore, special circumstances must be shown for these interim accounts to be assessed.

The accounts should be assessed

[49] Clarke asserts that special circumstances have been established for the assessment of the two interim accounts and that the court should exercise its inherent jurisdiction with respect to the final account.

[50] TMPC's position is that the two interim accounts should not be assessed because special circumstances have not been shown and because of Clarke's alleged bad faith and abusive conduct in the Small Claims Court action and in this application. TMPC relies on the latter in support of its position that the court should not exercise its inherent jurisdiction to grant an assessment of the final account. TMPC's alternative position is that the accounts should be assessed in the Small Claims Court action.

[51] Clarke advised Mathews that he would have the accounts assessed. Mathews invited the assessment of his final account. When the account was not paid, rather than assessing the account, TMPC brought the Small Claims Court action.

[52] At paragraph 44 of his January 19, 2024 affidavit, Clarke sets out the reasons that he was required to wait to commence the assessment and this application and which he asserts constitute special circumstances.

[53] Some of Clarke's reasons relate to Mathews agreeing to wait to be paid from costs awarded on the removal motion. This would have been known by October 27, 2022, when Smith J. delivered his reasons and did not award costs. Some of Clarke's reasons relate to the interim and final accounts themselves. They would have been known by Clarke by the time the final account was rendered on January 24, 2023. Some of the reasons relate to the underlying litigation. They would have been known by Clarke by the time Clarke ceased acting for Michael Gondosch in September

2023. Some of Clarke's reasons relate to the risk of disclosure of confidential information to Robert Gondosch. This issue has remained unchanged since the accounts were issued.

[54] The reasons put forward by Clarke are not an excuse for the delay in commencing an assessment. They do not constitute special circumstances.

[55] TMPC submits that the extension of time to assess all the accounts should be denied because Clarke has brought a multiplicity of proceedings, refused to accept service of the statement of claim, did not bill his client Michael Gondosch until 10 months after TMPC delivered the final account, delayed seeking assessment for a year until the Small Claims Court action was permitted to proceed to trial, "misrepresented" that the retainer was with Clarke and the Gondosch Parties, and recorded a conversation with Mathews without express disclosure or consent and failed to produce it in this application in a timely and clear way.

[56] TMPC alleges that allowing the assessment of the accounts would create a multiplicity of proceedings. It would not. If the assessment is allowed to proceed, the Small Claims Court action would be stayed except with respect to the determination of costs.

[57] By way of brief summary, the TMPC final account is dated January 24, 2023. Clarke issued his first account to Michael Gondosch on July 31, 2023. Clarke knew, by August 2023 that TMPC was bringing an action in the Small Claims Court to collect the final account. Michael Gondosch replaced Clarke as his lawyer of record in September 2023. Clarke issued his second account to Michael Gondosch on November 17, 2023. This application for an extension of time to commence an assessment of the accounts and related relief was brought on January 19, 2024.

[58] It appears that Clarke may have waited until after he knew that he would not be paid by his client to bring this application.

[59] I adopt the words of Centa J. in *Monkhouse Law v. Belyavsky*, 2024 ONSC 4970, at paras. 36-37:

Clients are entitled to have an independent review of a lawyer's account pursuant to the *Solicitors Act*. The bill is to be assessed on a *quantum meruit* basis, which considers the reasonable value of the lawyer's account. For that reason, it is an error in principle for an assessment to focus on the mechanical application of an hourly rate to a given number of hours rather than considering all relevant factors. The quantity of time spent by the lawyer does not solely determine the fairness or reasonableness of the account sent to the client.

In an assessment, the lawyer bears the onus of proving on a balance of probabilities that the account is fair and reasonable in all the circumstances. [Citations omitted.]

[60] Ordinarily, solicitors ought to consent to assessment even if it is asked for tardily: *Borden Ladner Gervais LLP v. Cohen*, 2005 CanLII 21114 (Div. Ct.), 199 O.A.C. 9, at para. 9. The right of a client to have the solicitor's account assessed is an important right and not to be taken away except in compelling circumstances: *Borden Ladner Gervais LLP*, at para. 12. Efforts by solicitors to avoid assessment are not to be encouraged: *Borden Ladner Gervais LLP*, at para 13.

[61] In my view, Clarke's conduct complained of by TMPC is not a bar to the assessment of TMPC's accounts. I do not find malicious intent on Clarke's part on the facts before me. Rather, Clarke's conduct appears to stem from reasons that Clarke found appropriate in his own mind and a lackadaisical and at times cavalier attitude towards the accounts, assessment, and litigation.

[62] Clarke raised issues with all the accounts and TMPC's fees throughout the retainer. It is not an issue raised after the fact when TMPC sued for its fees. This was a unique situation in which TMPC acted for Clarke in a matter where Clarke was acting for the Gondosch Parties. There was some discussion about tying payment of the accounts to payment by the Gondosch Parties. All of this was known to Matthews since at least the date he issued the final account.

[63] As noted above, in his statement of defence Clarke asserts that the Small Claims Court does not have jurisdiction, that TMPC's accounts have not been assessed pursuant to the *Solicitors Act*, and that the Small Claims Court action should be dismissed or stayed pending conclusion of an assessment under the *Solicitors Act*. The defence indicates that Clarke will be seeking an

extension of the time to commence the assessment. TMPC has been aware of these issues since August 29, 2023, and chose to proceed with the Small Claims Court action.

[64] On the facts before me, I find that the delay in bringing this application, while lengthy, is not sufficient to displace an entitlement to have the accounts assessed.

[65] I am satisfied that it is just and equitable that a reference for assessment of the final account be made.

[66] The three accounts all related to a single litigious event, the removal motion, and covered a limited time period. To assess whether the fees are fair and reasonable, it is necessary to assess all three accounts. In my view, the circumstances identified above constitute special circumstances. The first two accounts should be assessed together with the final account.

This court should determine the nature, scope, and effect of the Representation Agreement

[67] Clarke asserts there is a dispute as to the nature, scope, and effect of the Representation Agreement. This issue is not identified in the notice of motion. TMPC conceded this is now in issue but asserts that the dispute regarding the retainer cannot be raised before this court and that it should be determined in the Small Claims Court action.

[68] The first issue this raises is whether the dispute concerning the nature, scope and effect of the retainer is sufficiently pleaded. The second is whether an assessment officer or a judge of the Small Claims Court has jurisdiction to determine the issue. There is no dispute that a judge of the Superior Court has jurisdiction to do so.

[69] Clarke's initial position was that this issue is encompassed in the request for directions as to the parties to the assessment and service of materials in the notice of motion. In my view, it is not. An order for directions seeks procedural directions as to the conduct of a proceeding. It is not equivalent to the interpretation of an agreement, which constitutes substantive relief. TMPC's position is that the issue, not having been pled in the notice of motion, cannot now be raised by Clarke.

[70] In my view, the failure to explicitly plead that the nature, scope, and effect of the Representation Agreement is in issue in the notice of motion is not fatal.

[71] A notice of application should be read with its supporting affidavits and with the evidentiary record: *Przysuski v. City Optical Holdings Inc.*, 2014 ONSC 3686, at paras. 10-11. While this matter was commenced by way of notice of motion, both parties treated it the same as an application. The facts with respect to Clarke's position on the Representation Agreement are sufficiently set out in his affidavit filed in support of the notice of motion.

[72] In these circumstances, I find that the notice of motion and supporting affidavit sufficiently engage the issue of the interpretation of the Representation Agreement.

[73] Clarke seeks an order for assessment by an assessment officer. TMPC's position is that a dispute concerning the nature, scope, and effect of a retainer cannot be determined by an assessment officer but can be decided by the Small Claims Court.

[74] The Court of Appeal for Ontario, in *Cookish v. Paul Lee Associates Professional Corporation*, 2013 ONCA 278, [2013] O.J. No. 1947, considered whether an assessment officer has jurisdiction to determine a dispute concerning a retainer agreement in general. The Court determined, at para. 16, that,

[I]t is not accurate to say that such authority may never be given to an assessment officer. However, the preferable procedure is for a judge to determine these issues. Once they have been resolved, the bill may then be referred to the assessment officer for a determination of the proper quantum, if necessary.

[75] An assessment officer has no jurisdiction to determine disputes relating to the existence, nature, terms, or extent of a retainer agreement where the order is obtained on requisition under s. 3(1) of the *Solicitors Act*, except where (i) there is really no legitimate dispute regarding the retainer; or (ii) the dispute relates only to the quantum of the bill: *Cookish*, at para. 20. There is nothing in the *Solicitors Act* that expressly grants an assessment officer the authority to resolve

disputes regarding the retainer in any other circumstances. The route to that authority lies in the reference procedure in the *Rules of Civil Procedure* R.R.O. 1990, Reg. 194: *Cookish*, at para. 21.

[76] The Court in *Cookish* went on to note that the parameters of r. 54.02 suggest that the discretion to refer matters for determination may only be invoked on the basis that “a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial” or that the proceedings involve a contest that calls for “the taking of accounts”. Further, disputes concerning the “validity or effect” of a retainer agreement do not readily fall into those categories: *Cookish*, at para. 33.

[77] The Court of Appeal concluded at para. 34, that:

[I]n general, disputes regarding the validity or effect of a retainer agreement should be determined by a judge. Absent the consent of the parties, the judge hearing an application for referral of a solicitor’s bill for assessment should give careful consideration to whether it is appropriate to incorporate the resolution of issues regarding a disputed retainer in the order for referral being made.

[78] Acknowledging that an assessment officer likely does not have jurisdiction to determine the nature, scope, and effect of a retainer agreement, Clarke submits that this court can make that determination on the materials before it.

[79] TMPC was given an opportunity to make submissions on the nature, scope, and effect of the retainer agreement and, when asked, agreed that there is no further evidence to put before the court on that issue. TMPC’s position is that the issue of the nature, scope, and effect of the retainer agreement should be addressed in the Small Claims Court action.

[80] In my view, this court is well placed to determine these issues. There is nothing to be gained from deferring them to another court. Doing so would waste limited judicial resources and result in additional costs to the parties. Addressing the issues now is the most just and expeditious manner of dealing with the issues on their merits. It is preferable that I address the evidentiary issue and the nature, scope, and effect of the retainer agreement on the evidence and submissions before me.

[81] There is an evidentiary issue raised by the parties which must be addressed before the nature, scope, and effect of the retainer agreement can be determined. The parties filed materials on this issue and made submissions.

The recorded conversation is not admissible

[82] Clarke seeks to rely on the transcript and recording of a conversation with Mathews on June 17, 2022. In its written materials, TMPC seeks to have the evidence of the conversation struck from the record or, in the alternative, an order that the contents of the conversation not be admissible because Mathews was not advised that the conversation was to be recorded and his consent to the recording was not sought or obtained. In oral submissions, TMPC took the position that the evidence is not admissible because it is not relevant and because the evidence tendered by Clarke with respect to the transcript is insufficient to establish admissibility.

[83] Clarke submits that he can rely on the recording because he sent numerous emails to Mathews containing a disclaimer at the bottom of the email that all phone calls should be treated as recorded with permission for record keeping and quality control purposes. He submits this was actual notice to Mathews that the conversation would be recorded. Clarke submits that he instigated the recording out of concern for rising costs. If so, this was not for “record keeping” or “quality control” purposes.

[84] Rule 7.2-3 of the Law Society of Ontario’s *Rules of Professional Conduct* provides that a lawyer shall not use any device to record a conversation between the lawyer and a client or another legal practitioner, even if lawful, without first informing the other person of the intention to do so. Clarke was a client of Mathews but is also a lawyer of longstanding.

[85] The recording of conversations by a lawyer, without explicit consent, should be discouraged. It has the potential to undermine the solicitor-client relationship and diminish the ability of clients to speak freely for fear that the privileged information they convey to their lawyers could later be released or used against them.

[86] In my view, a disclaimer attached to emails sent by a lawyer is not sufficient to obtain the consent of a client or another lawyer to record a conversation. Clarke should have explicitly advised Mathews, a lawyer who was also acting for him, that he was going to record the conversation to be used in the future if necessary. Mathews would then have had an opportunity to consider whether to consent or to participate in the call.

[87] However, this does not render the recording inadmissible if it is otherwise relevant.

[88] There is apparently an MP3 recording attached to Clarke's affidavit of June 10, 2024, which appears to have been sworn June 11, 2024. The affidavit of Youngbin Kim dated August 14, 2024, itemizes numerous issues and irregularities with respect to Clarke's June 10/11, 2024, affidavit which I need not itemize here. Although the application was heard over two days, the recording of the telephone call was not played in court. The transcript was not brought to my attention or reviewed with the court.

[89] I advised counsel at the outset of the hearing that, in accordance with the February 1, 2024, Consolidated Civil Provincial Practice Direction, materials not brought to my attention at the hearing may not be considered. I am not reviewing the MP3 of the recording.

[90] After some searching, I was able to locate a transcript of the conversation in the more than 1200 pages of materials uploaded to Case Centre. The transcript is certified by a reporter at Network Reporting & Mediation.

[91] TMPC relies on the following excerpt from *Aware Ads Inc. v. Walker*, 2022 ONSC 5543, at para. 29:

If the plaintiff wished the recording to form part of the evidence on the motion, it needed to provide affidavit evidence to demonstrate a proper foundation for the admissibility of the recording. This is not a difficult hurdle to overcome. Mr. Buchalter could easily have provided the proper foundation in an affidavit by swearing that:

- a. he had a conversation with Mr. Walker on October 7, 2021;

- b. he recorded the conversation himself using whatever software he used;
- c. he knows the data file in the exhibit contains that recording because he listened to the file and confirmed that it was the conversation that he recorded on October 7, 2021;
- d. a copy of that data file has been placed on a USB drive that is shown to him and marked as an exhibit to his affidavit or that the data file is found in an on-line repository at the URL listed in his affidavit.

[92] TMPC asserts that Clarke has not tendered evidence with respect to items b. through d.

[93] The onus lies on Clarke, as the party tendering the transcript, to prove authenticity: *Aware Ads*, at para. 23. No affidavit evidence was brought to the court's attention regarding what the transcript was based on, that Clarke reviewed the transcript and compared it to the recording, and that the transcript is what it purports to be. Indeed, the face page of the transcript states it is a telephone conversation that took place on June 6, 2022. The alleged conversation sought to be relied on by Clarke occurred on June 17, 2022. There is no affidavit evidence that the transcript is the entirety of the conversation or that Clarke accepts the contents as true. For these reasons, I find that the transcript is not admissible.

[94] Even if the transcript were admissible, it adds little to Clarke's evidence in his January 18, 2024 affidavit, in particular paragraphs 25 and 28, which are relevant to the telephone call.

The Representation Agreement is a simple retainer

[95] The Representation Agreement is a contract. To determine the nature, scope, and effect of the Representation Agreement, I am to apply the principles in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53, [2014] 2 S.C.R. 633 to discover the mutual objective intentions of the parties as expressed in the words of the contract and to give those words their ordinary and grammatical meaning consistent with the surrounding circumstances known to the parties at the time of formation of the contract: *Sattva*, at paras. 47 and 57.

[96] The surrounding circumstances should not overwhelm the words of the agreement; courts cannot use them to deviate from the text such that the court effectively creates a new agreement: *Sattva*, at para. 57.

[97] Where there is no ambiguity in the contract, the surrounding circumstances should only consist of objective evidence that was or reasonably ought to have been within the knowledge of both parties as at the date of contracting: *Sattva*, at para. 58. The subjective intention of the parties is not to be considered: *Sattva*, at paras. 59 and 60.

[98] Clarke's position is that the terms of the Representation Agreement were revised such that he was not guaranteeing Mathews' fees beyond \$4,000, that the maximum amount of TMPC's accounts were agreed to be limited to \$8,600 plus tax and disbursements, and that the Gondosch Parties were also TMPC's clients. TMPC denies these amendments.

[99] The Representation Agreement contains a very simple entire agreement clause and requires changes to be in writing.

[100] An entire agreement clause does not prevent the parties from amending the terms of their agreement. Parties can, by their conduct, demonstrate that they do not intend to be bound by clauses in an agreement notwithstanding a clause that requires changes to be executed in writing: *Jack Ganz Consulting Ltd. v. Recipe Unlimited Corporation*, 2021 ONCA 907, at para. 56, and cases cited therein.

[101] Post-contract events can affect both the enforceability of the obligations in the agreement and add new obligations to those imposed by its terms. Entire agreement clauses do not apply prospectively unless the wording expressly so provides: see *Soboczynski v. Beauchamp*, 2015 ONCA 282, 125 O.R. (3d) 241, leave to appeal refused, [2015] S.C.C.A. No. 36489, at paras. 51-52. The entire agreement clause in the Representation Agreement does not expressly provide that it applies prospectively.

[102] Mathews denies providing estimates to Clarke. Clarke's own evidence as set out in his affidavit is that the figures provided to him by Mathews, including the total costs for the removal motion, were estimates. In submissions, Clarke acknowledged that he understood they were estimates. The vagaries of litigation are well known to experienced lawyers. TMPC sets out some of the unexpected events in its responding materials.

[103] The terms of the Representation Agreement are clear. The \$4,000 is clearly referred to as an initial retainer. It states that further sums could be demanded. Clarke acknowledges he has been a lawyer for almost 50 years. He would have understood this. The Representation Agreement contained no limits on the fees to be charged. It is a straightforward hourly rate and time spent plus disbursements retainer agreement. Mathews provided estimates and that is all. I find that there was no cap or limit on TMPC's fees. Clarke may have wished there was, but I find that the parties never reached such an agreement and no such amendment was made to the Representation Agreement.

[104] The Representation Agreement is clear that only Clarke, and not the Gondosch Parties, are TMPC's clients. Mathews' evidence is that he told Clarke he was acting only for Clarke and that Mathews never spoke with the Gondosch Parties. There is no contrary evidence.

[105] Other than bald assertions, the only evidence that Clarke could point to that the Gondosch Parties were clients of TMPC is that Clarke and Mathews were listed as counsel for the Gondosch Parties in Smith J.'s decision on the removal motion. This does not make the Gondosch Parties clients of TMPC.

[106] Even if Mathews contemplated that TMPC would not be paid until the Gondosch Parties received costs from the removal motion or had funds, that does not make them his clients. Clarke was his client and Clarke sought to obtain the fees for payment of TMPC through his clients, the Gondosch Parties. I find that the Gondosch Parties were not TMPC's clients and no such amendment was made to the Representation Agreement.

[107] Clarke asserts the Representation Agreement was amended such that he would only guarantee TMPC's fees to \$4,000. I do not agree.

[108] According to Clarke's evidence, the initial \$4,000 was obtained from his clients and transferred to TMPC. Clarke's evidence is that he told Mathews that he would not guarantee all of TMPC's fees. Clarke deposes that Mathews agreed to wait for payment from the Gondosch Parties with no guarantees from Clarke. Clarke tendered evidence that Mathews said he could be patient with payment within reason given Clarke's explanation of his client's predicament.

[109] There is no evidence that any new consideration passed to TMPC to amend the Representation Agreement to include a term that Clarke would only guarantee fees up to \$4,000. TMPC gratuitously agreed to defer issuing accounts and receiving payment for a reasonable period.

[110] Indeed, on August 17, 2022, Mathews asked Clarke if Clarke's client now had funds available for payment and inquired about billing for work to date. On September 28, 2022, Mathews and Clarke discussed the amount outstanding and an interim account. TMPC issued an interim account as directed by Clarke. On November 20, 2022, Clarke and Mathews discussed Mathews' outstanding fees. On January 24, 2023, Mathews wrote to Clarke to ask if he could bill his remaining time. He issued the final account that day.

[111] In submissions, Clarke acknowledged that his position that he only agreed to guarantee \$4,000 did not mean that he was not obligated to pay the accounts, just that he was not going to guarantee them. It means nothing for Clarke to say that he will not guarantee any accounts over \$4,000 in this context. Clarke is the client. Clarke is liable for the fair and reasonable costs. Clarke may have wanted the fees to be paid by the Gondosch Parties, and TMPC may have been willing to wait for a reasonable amount of time for the Gondosch Parties to fund the fees, but that does not change the fact that Clarke is liable for the fees.

[112] Even if there was an amendment to the Representation Agreement specifying that Clarke would not guarantee fees beyond \$4,000, it is a meaningless amendment. Clarke was and remains

liable for the fees. Clarke may be able to collect the fees from his clients, but that is a matter between Clarke and his clients.

[113] In short, I find that the terms of the Representation Agreement are as set out in the agreement. It is a simple and straightforward hourly rate plus disbursements fee agreement.

The accounts should be referred to an assessment officer

[114] Clarke’s position is that once the scope, nature, and effect of the Representation Agreement has been determined, the matter can be referred to an assessment officer.

[115] TMPC’s position is that the assessment should be conducted in the Small Claims Court action which is extant and that the Small Claims Court has jurisdiction to assess accounts.

[116] In *Cookish*, at para. 25, the Court of Appeal for Ontario stated that s. 23 “is the provision that addresses the determination of disputes under a retainer agreement (including a contingency fee agreement) in general.”

[117] Section 23 of the *Solicitors Act* provides:

No action shall be brought upon any such agreement, but every question respecting the validity or effect of it may be examined and determined, and it may be enforced or set aside without action on the application of any person who is a party to the agreement or who is or is alleged to be liable to pay or who is or claims to be entitled to be paid the costs, fees, charges or disbursements, in respect of which the agreement is made, by the court, not being the Small Claims Court, in which the business or any part of it was done or a judge thereof, or, if the business was not done in any court, by the Superior Court of Justice.

[118] In *Jane Conte Professional Corporation v. Josephine Smith*, 2014 ONSC 6009, [2014] O.J. No. 5033, Nordheimer J., sitting as a single judge of the Divisional Court, considered ss. 23 and 24 of the *Solicitors Act* in the context of determining whether a Small Claims Court judge had jurisdiction over a contingency fee agreement. At para. 20, Nordheimer J. held that:

In my view, once a lawyer chooses to enter into a written agreement with his or her client “respecting the amount and manner of payment for the whole or a part of any past or future services in respect of business done or to be done by the solicitor” then the lawyer is bound by the procedures set out in ss. 20 to 32 of the *Solicitors Act*. In particular, if the lawyer wishes to enforce the agreement then he or she must, as set out in s. 23, bring an application for that purpose in the court “in which the business or any part of it was done or a judge thereof, or, if the business was not done in any court, by the Superior Court of Justice”. I repeat that s. 23 expressly excludes the Small Claims Court from this authority.

[119] At para. 24, Nordheimer J. concluded that:

[T]he Small Claims Court had no jurisdiction to consider a claim made by a lawyer based on a written fee agreement including a contingency fee agreement. I would note, in passing, that this conclusion appears to be consistent with the general rule that questions involving the nature, validity or effect of a contingency fee agreement should be resolved by judges: *Cookish v. Paul Lee Associates Professional Corp.*, 2013 ONCA 278 (CanLII), [2013] O.J. No. 1947 (C.A.) at para. 39.

[120] In *Cozzi v. Heerdegen*, 2016 ONSC 3082, at para. 4, Dambrot J., sitting as a single judge of the Divisional Court, considered ss. 16(1) and 23 of the *Solicitors Act*. At para. 16, Dambrot J. held that:

[A]n agreement within the meaning of s. 16(1) of the Act is a fee agreement that is out of the ordinary, such as contingency fee arrangements. At any rate, a simple retainer agreement in writing setting out a solicitor’s hourly rate does not fall within s. 16(1). If a simple written retainer agreement setting out an hourly rate does not fall within s. 16(1), then it escapes the prohibition against action in s. 23 of the *Solicitors Act*.

[121] Further, at para. 21:

Finally, I see no inconsistency between my conclusion and the conclusion reached by Nordheimer J. in *Jane Conte*. I agree with him that by virtue of s. 23 of the *Solicitors Act*, the Small Claims

Court has no jurisdiction to hear a claim made by a lawyer based on a “written fee agreement.” But this limitation on jurisdiction relates only to written agreements falling within s. 16(1) of the *Solicitors Act*. As a result of my interpretation of s. 16(1), I do not consider a simple retainer agreement setting out an hourly rate to be a written fee agreement as that phrase was used by Nordheimer J. In other words, an action may be brought by a lawyer upon any such agreement.

[122] At para. 22, Dambrot J. held that a client who enters into a simple retainer agreement can raise issues relating to the validity or effect of a written fee agreement in any action brought by a lawyer to recover fees. In addition, Dambrot J. held that a client who makes such an agreement may still obtain an order for assessment of a bill pursuant to s. 3 of the *Solicitors Act* where the retainer is not disputed and there are no special circumstances.

[123] In *Zeppieri & Associates v. Gupta*, 2016 ONSC 6491, [2016] O.J. No. 5355, the court concurred with the reasons of Dambrot J. in *Cozzi*. At para. 9 of *Zeppieri*, the court held that:

In assessing a bill referred for assessment, the assessment officer is entitled to consider the full range of circumstances described in the extensive jurisprudence on the topic in order to determine what amount is fair and reasonable in all of the circumstances. In appropriate cases, the solicitor’s bill may be reduced.

[124] At paras. 21-24 of *Zeppieri*, the court held:

I conclude that a “standard” engagement agreement is not the sort of “agreement” contemplated by s. 16, s.17 or s. 23 of the *Solicitors Act*. I further conclude that an action on one or more bills pursuant to a written agreement that is not an “alternative fee arrangement” is not covered by s. 23. Accordingly, there is no bar to proceeding to enforce collection of liquidated sums owing in the Small Claims Court.

An important caveat is required. 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).

A lawyer who chooses to seek collection of an account by way of action cannot thereby preempt the undoubted right of the client to have that bill assessed. The client's right to assess a solicitor's bill is a matter of overriding public policy and cannot be defeated by tactical manoeuvres of a swift or clever lawyer.

That being said, clients are subject to time limits if they seek an assessment of a bill under the *Solicitors Act*. These time limits can be extended in appropriate cases, but only upon establishing some basis for seeking relief. Where a client has failed to object to request assessment in a timely way of a lawyer's account properly rendered, a late attempt to seek an extension of time to do so may take on the appearance of being motivated by a desire to defeat a pending collection action and may well require convincing evidence to justify a court extending the times stipulated in s. 3 and s. 4 of the *Solicitors Act*.

[125] The Court of Appeal in *Almalki v. Canada (Attorney General)*, 2019 ONCA 26, at para. 47, referenced para. 22 of *Zeppieri*, and at para. 48 accepted that the *Solicitors Act* is consumer protection legislation.

[126] In the Divisional Court decision in *Gilbert's LLP*, Nordheimer J. revisited the issue of the scope of ss. 16(1) and 23 of the *Solicitors Act* in the context of a simple fee agreement. The agreement provided that the client would be billed for the work done on an hourly basis, set out the hourly rates that would be charged for the lawyers involved, provided for the billing of disbursements, and provided that accounts would be rendered monthly.

[127] Nordheimer J. agreed with Dambrot J. in *Cozzi* that s. 16(1) only applies to written fee agreements that are out of the ordinary: at para. 24. He noted that insofar as the language he used in his reasons in *Jane Conte* can be seen as applying to all written fee agreements, they were in error.

[128] Nordheimer J. concludes, at para. 33 in *Gilbert's LLP*:

[A] simple or usual written fee agreement does not fall within the scope of s. 16(1); it is not covered by the requirement of review under s. 17; and it is not subject to the prohibition against an action being commenced to enforce it under s. 23. A lawyer, who has a simple or usual fee agreement, is entitled to have resort to the assessment process if s/he wants to, but the lawyer is also entitled to commence an action to recover his/her fees as contemplated by s. 2. As I have said, the client retains the right to require an assessment as provided for in s. 3.

[129] Nordheimer J. reiterates, at para. 30, that:

[C]lients still retain the right to have an account assessed under s. 3 of the *Solicitors Act*, and the one month prohibition on a lawyer commencing an action to recover payment remains under s. 2, so that the client has that time to seek an assessment. For another, the client retains the right, in any action commenced to enforce a written fee agreement, to plead all of the common law defences that might be applicable, such as unconscionability, undue influence, *non est factum*, and the like.

[130] The court in *Gilbert's LLP* does not address paras. 21-24 of *Zeppieri*.

[131] I conclude from the review of the case law that a lawyer who has a simple fee agreement for fees based on an hourly rate plus disbursements is, after the passage of a month from the delivery of the account, entitled to sue on the accounts in the Small Claims Court as contemplated by s. 2. Where such an action is commenced, a client can raise issues relating to the validity or effect of a written fee agreement and plead all the common law defences that might be applicable, such as unconscionability, undue influence, and *non est factum*. In an action on a solicitor's account, the issues of fairness and reasonableness must be considered, if pleaded. A Superior Court judge has the jurisdiction to do so, but also has the option of referring the bills for assessment: *Borden Ladner Gervais LLP*, at para. 13.

[132] In an assessment, the assessment officer is entitled to consider the full range of circumstances described in the extensive jurisprudence on the topic to determine what amount is fair and reasonable in all the circumstances. In appropriate cases, the solicitor's bill may be

reduced. In my view, it remains somewhat unclear whether the Small Claims Court has jurisdiction to reduce or adjust a bill in the way an assessment officer can. However, based on my conclusion below that the accounts should be referred to an assessment officer, I need not determine whether the Small Claims Court has such jurisdiction.

[133] As discussed above, the court may, where appropriate, order an assessment for both paid and unpaid accounts more than a month after their delivery pursuant to ss. 4 and 11 of the *Solicitors Act*. In my view, a client should have to the ability to require an assessment in the face of an outstanding collection action in the Small Claims Court if the court is satisfied that one should be ordered. Otherwise, the client rights in ss. 4 and 11 could potentially be eliminated by the lawyer commencing an action to collect accounts one month and one day after the account is issued. This conclusion is bolstered by the Court of Appeal's comments in *Borden Ladner Gervais LLP* that the right of a client to have the solicitor's account assessed is an important right not to be taken away except in compelling circumstances and that efforts by solicitors to avoid assessment are not to be encouraged.

[134] Where a client seeks such an assessment of accounts in the face of an outstanding Small Claims Court action to collect those accounts, whether the accounts should be referred to an assessment officer will depend on the circumstances.

[135] It will also depend on the nature of the issues raised by the client and whether the assessment officer or only the court has jurisdiction to deal with those issues. If there is a dispute regarding the retainer, the assessment officer does not have jurisdiction. If the client counterclaims for negligence, or the lawyer asserts a separate contract for which the client is liable, the assessment officer does not have jurisdiction: see *Fellowes*, at para. 6. If a prolonged examination of documents or an investigation is required that, in the opinion of the judge, cannot conveniently be made at trial, it should be referred for assessment.

[136] In considering the circumstances, I conclude that the accounts should be referred to an assessment officer.

[137] Clarke first asserted that the accounts should be assessed on January 24, 2023. In his statement of defence in late August 2023, shortly after the Small Claims Court action was started, Clarke asserted that the Small Claims Court does not have jurisdiction, that TMPC's accounts have not been assessed pursuant to the *Solicitors Act*, and that the Small Claims Court action should be dismissed or stayed pending an assessment under the *Solicitors Act*. The statement of defence indicates that Clarke will be seeking an extension of the time to commence the assessment. It is clear from the defence that Clarke is raising issues of fairness and reasonableness of the accounts and that the assessment should be conducted by an assessment officer. TMPC continued on with the Small Claims Court action.

[138] At this stage, the only remaining issue is the fair and reasonable amount of the fees. There are no other issues or circumstances that would take this out of the jurisdiction of an assessment officer. In my view, there are no compelling reasons to take away the right of the client to assess the accounts and an assessment officer is better placed to assess the fair and reasonable amount of the accounts.

The Gondosch Parties should not be parties to the assessment

[139] Clarke added the Gondosch Parties to this application and seeks to add them to the assessment of TMPC's accounts.

[140] Other than taking the position that they are not proper parties, the Gondosch Parties take no position on the relief sought in this application. They did not file responding materials. They attended the hearing and made submissions.

[141] The Gondosch Parties are not TMPC's clients. Clarke knew this. In Clarke's January 18, 2024, affidavit, he states that he wrote to his clients and told them "Mathews will act for me on this motion as his client." The issue of the assessment of TMPC's accounts is between TMPC and Clarke. The Gondosch Parties should not have been made parties to this application and are not added as parties to the assessment of TMPC's accounts.

Disposition

[142] There shall be an order referring for assessment the following TMPC accounts: June 20, 2022, Invoice No. 20143062; September 28, 2022, Invoice No. 20143233; and January 24, 2023, Invoice No. 20143425.

[143] If required, the registrar shall issue an order for assessment of the above three accounts of TMPC.

[144] The assessment shall be conducted before an assessment officer in Kitchener/Waterloo, Ontario.

[145] The Gondosch Parties are not parties to the assessment.

[146] The Small Claims Court action is stayed, except that the parties to the action may pursue the costs of the action.

Costs

[147] The parties are encouraged to resolve the issue of costs. If they are unable to do so, they may submit a bill of costs and make written submissions consisting of not more than three double-spaced pages in length, together with any relevant offers to settle and excerpts of any legal authorities referenced, according to the following timetable:

- a. Clarke shall serve and file his costs submissions, if any, by no later than January 20, 2025.
- b. TMPC shall serve and file its costs submissions, if any, by no later than February 3, 2025.
- c. The Gondosch Parties shall serve and file their costs submissions, if any, by no later than February 3, 2025.

[148] All submissions are to be provided to the trial coordinator by end of day February 3, 2025. If no submissions or written consent to a reasonable extension are received by the court by then, the matter of costs will be deemed to have been settled.

Justice M. Bordin

Released: January 2, 2025

CITATION: Clarke v. Mathews v. Gondosch and 1394536 Ontario Ltd., 2025 ONSC 1
COURT FILE NO.: CV-24-00182
DATE: 2025-01-02

ONTARIO

SUPERIOR COURT OF JUSTICE

B E T W E E N:

GORDON S. CLARKE

Moving Party/Solicitor

- and -

THOMAS MATHEWS AND THOMAS
MATHEWS PROFESSIONAL CORPORATION

Responding Parties/Solicitors

- and -

MICHAEL GONDOSCH AND 1394536
ONTARIO LTD.

Respondents/Clients

REASONS FOR JUDGMENT

Justice Bordin

Released: January 2, 2025