

COURT OF APPEAL FOR ONTARIO

CITATION: Wallbridge, Wallbridge v. Poupore, 2026 ONCA 417

DATE: 20260615

DOCKET: COA-24-CV-1162

Simmons, Miller and Wilson JJ.A.

BETWEEN

Wallbridge, Wallbridge

Plaintiff (Appellant)

and

Patrick Poupore*, Kristin Connors, Renee Guenette and
Diamond & Diamond

Defendants (Respondent*)

AND BETWEEN

Patrick Poupore

Plaintiff by Counterclaim (Respondent)

and

Wallbridge, Wallbridge

Defendant by Counterclaim (Appellant)

Geoffrey D. E. Adair, for the appellant

Milton Davis, Ronald Davis and Yael Kogan, for respondent

Heard: December 9, 2025

On appeal from the judgment of Justice Tracey Nieckarz of the Superior Court of Justice, dated October 23, 2024, with reasons reported at 2024 ONSC 5873.

B.W. Miller J.A.:

A. OVERVIEW

[1] This appeal concerns a dispute over the remuneration owed by a law firm to a former employee. In particular, it addresses whether a departed lawyer whose compensation was based on a percentage of collected receipts is entitled to compensation for work done during the term of employment but either not billed or not collected by the firm until post-termination.

[2] For the reasons set out below, I would allow the appeal in part. Under the terms of the employment contract, the respondent was to be paid for the successful resolution of claims from the fees collected by the firm. However, the contract made no provision for remuneration for an employee's contributions to those files that were subsequently brought to resolution by others. Neither is there a basis for such compensation for unjust enrichment on a *quantum meruit* basis.

[3] Finally, I would not allow the appeal from the trial judge's finding that the respondent did not breach the contract of employment.

B. BACKGROUND

1. Factual background

[4] Patrick Poupore is a personal injury lawyer. For 18 years he was employed by the firm Wallbridge, Wallbridge ("Wallbridge") in Sudbury. Like other lawyers at the firm, he represented clients pursuant to contingency fee agreements and was

paid on a commission basis, meaning he was not paid for work done on a file unless and until it was successfully brought to completion. In February 2021, while still employed by Wallbridge, Mr. Poupore began discussions with Diamond & Diamond (“Diamond”) towards establishing a competing office in Sudbury. On June 15, 2021, he signed a contract with Diamond, whereby he committed to commence employment with them on October 18, 2021. In the meantime, he continued his employment with Wallbridge. His only service to Diamond during this time was to assist in finding suitable office space in Sudbury. He first advised Wallbridge of his plans on October 1, 2021, and Wallbridge responded by immediately terminating his employment.

[5] The same day, Wallbridge sent Mr. Poupore a letter requiring the immediate delivery of his keys, advising him that his access to the firm data server was terminated, and threatening litigation. There was an immediate disagreement between the parties as to their respective professional obligations to the clients of the firm. Wallbridge was uncooperative with Mr. Poupore’s attempts to fulfill his obligations under the *Rules of Professional Conduct*, which required that clients be advised of Mr. Poupore’s departure and be provided with the option of following him to the new firm.

[6] Shortly thereafter, Wallbridge brought an action for damages and a declaration that Mr. Poupore had no entitlement to any compensation for work in progress (“WIP”) that was still unbilled as of February 1, 2021, claiming that

Wallbridge would have terminated Mr. Poupore by this date had they known about his agreement with Diamond. Wallbridge sought \$3 million in damages against Mr. Poupore, \$3 million against Diamond, and \$100,000 each against Mr. Poupore's assistant and law clerk, who both followed him to Diamond. Wallbridge eventually discontinued the latter three claims. Mr. Poupore brought a crossclaim seeking damages for breach of contract and, in the alternative, unjust enrichment. Both parties sought punitive damages.

2. The decision below

[7] Wallbridge's position on the motions was that Mr. Poupore's entitlement to compensation ended when his employment was terminated. Wallbridge disagreed that Mr. Poupore was entitled to any share of fees from files under his carriage that were not paid out to him by Wallbridge before his departure. The fees in dispute fell into three categories: (1) those fees billed by Mr. Poupore and collected by Wallbridge in the month prior to Mr. Poupore's termination, which were generated from settlements achieved by Mr. Poupore; (2) those fees that were billed and collected by Wallbridge post-termination, for files over which Mr. Poupore had carriage before they were transferred by Wallbridge to other lawyers at the firm; and (3) those fees that were billed and collected from three settlements Mr. Poupore negotiated while at Wallbridge, for clients who followed Mr. Poupore to Diamond before their fees were billed and collected.

[8] The parties brought a motion for summary judgment to resolve the entitlement issues on the agreement that damages would then be quantified in an out of court process.

[9] The motion judge found that the terms of Mr. Poupore's employment with Wallbridge varied over the years. He first joined the firm as a salaried employee in 2003 without a written employment contract. In 2006, he moved to being paid on the basis of commissions and bonuses based on a percentage of fees billed and collected. This employment agreement was, again, made orally, and the compensation structure was later confirmed by Wallbridge in a memorandum entitled "Re: Overhead and Profit Sharing." In March 2017, the compensation structure was unilaterally adjusted by Wallbridge to provide the firm with the option to charge unbilled disbursements of five years and older against the commissions payable to the responsible lawyer.

[10] The mechanics for calculating Mr. Poupore's share of received billings were not disputed. What was disputed was his entitlement to fees received post-termination. It was common ground between the parties that the employment agreement did not explicitly address compensation entitlements of departing lawyers, and that Wallbridge did not have any written policy addressing the matter.

[11] The motion judge found that there was an oral agreement between the parties "that Patrick would perform work based on a promise to pay by Wallbridge,

in accordance with the agreed upon percentages, once a file realized settlement or judgment proceeds. The entitlement to payment does not crystallize until the fees are billed and collected.” The motion judge found that the employment contract therefore entitled Mr. Poupore to compensation for all three categories of fees outlined above.

[12] The motion judge found in the alternative that even if there was no agreement, Mr. Poupore would be entitled to compensation on a *quantum meruit* basis: “For Wallbridge to retain the benefit of Patrick’s work or permit another member of their firm to retain that benefit, to Patrick’s detriment would constitute an unjust enrichment for which there is no juristic reason.”

[13] The motion judge dismissed Wallbridge’s claim for damages against Mr. Poupore. The motion judge found that Mr. Poupore did not breach any duty he owed to Wallbridge. His actions in assisting Diamond in finding office space in Sudbury did not amount to anything more than planning his departure. He also did nothing to induce the departure of the two Wallbridge employees who followed him to Diamond. The motion judge found that, in any event, Wallbridge failed to prove it had suffered any damage.

[14] Thus, the motion judge ordered Wallbridge to pay Mr. Poupore:

- (1) His commission for September 2021 (50% of fees billed and collected, amounting to \$21,000)¹;
- (2) His commission with respect to WIP that was unbilled at the time of termination, calculated as follows: “either one-third or 50% share (as the case may be depending on whether his billings at the time of collection of the account were over \$450,000 in the relevant years) of amounts billed and collected by Wallbridge on files of which he had carriage while at Wallbridge, taking into consideration that a reasonable allocation must be made to the lawyer assuming carriage of the matter, and negligible fee claims for a file should be avoided” [para. 5 of the formal judgment]; and
- (3) His commission with respect to three files that were settled prior to termination and transferred to Diamond & Diamond, calculated as follows: “Any portion of the fees ... billed and collected in 2022 ... shall be paid to Mr. Poupore as follows: (i) payment at a rate of one-third if Mr. Poupore’s post-departure billings for 2022 are less than \$450,000 as of the date the account was collected; or (ii) payment at a rate of 50% if Mr. Poupore’s post departure billings for 2022 are more than

¹ Wallbridge does not contest this aspect of the motion judge’s order on appeal.

50% as of the date the account was collected” [para. 3c. of the formal judgment].

3. Issues on appeal

[15] Wallbridge advanced four grounds of appeal:

- (1) The motion judge erred in the interpretation of the employment contract:
 - (a) By allowing the surrounding circumstances to overwhelm the plain words of the agreement;
 - (b) By failing to give due weight to permissible contextual factors and giving weight to non-permissible ones; and
 - (c) By shifting the onus;
- (2) The motion judge made a legal error in finding unjust enrichment;
- (3) The motion judge erred in finding that Mr. Poupore did not breach his duty to Wallbridge; and
- (4) The motion judge erred in finding that there was no evidence of damage suffered by Wallbridge.

C. ANALYSIS

1. The interpretation of the employment contract

[16] The appellant argues that the motion judge erred in finding a contractual entitlement to post-termination compensation, given that the parties never turned their minds to the issue and so never formed an agreement for payment post-termination. If the contract was terminated, and if there was no provision in the contract for post-termination payment, then there was no entitlement to post-termination payment. Such an obligation could only have arisen through contract, the appellant did not and would never have agreed to such a term, and in the absence of an agreement, there could be no contractual obligation. Further, there was no basis to infer terms into the contract.

[17] The motion judge relied on this court's decision in *Dumbrell v. The Regional Group of Companies Inc.*, 2007 ONCA 59, 85 O.R. (3d) 616, to infer an obligation to pay from the express terms of the oral contract, and the contextual factors at the time the contract was made. In that case, an employee was to be paid 50% of profits earned as a result of the employee's "direct involvement for completed and closed projects": at para. 43. The motion judge understood the holding in *Dumbrell* to be that where there is a contractual obligation to pay compensation at the time of termination of the contract, that obligation survives the termination of the contract unless there is an express term providing otherwise.

[18] The motion judge then examined the words of the oral contract and the surrounding circumstances to determine: (1) whether there was an obligation to pay compensation; and (2) whether there was any express or implied term negating that obligation post-termination. She reasoned that there were “contextual factors that contraindicate a reasonable person concluding the agreement was subject to an express understanding of no compensation on leaving the firm, or alternatively imposing such a limit.” These contextual factors were:

- (1) The purpose of the agreement was to set out how Mr. Poupore was to be compensated for the work he did;
- (2) Mr. Poupore’s compensation structure changed from straight salary, where there would be no expectation of payment post-termination, to a commission/bonus structure;
- (3) Under a commission/bonus structure, both parties agreed to assume the risk that work done on a file may not generate revenue. In this context, “a reasonable person would not expect that once a file is billed and collected, that Patrick would receive nothing at all for his efforts simply because he left the firm;” and,

- (4) In the absence of an agreement to the contrary, a reasonable person would have expected to be paid post departure for his share of the billings he generated, on collection by the firm.

[19] The appellant summarized these four contextual factors as, essentially, two propositions: (1) a contract for services presumes payment for all services provided, unless the contract provides otherwise (which it did not); and (2) fair-minded people, if they had turned their minds to the question, would have intended to create such an obligation. The appellant argues that these are not contextual factors that assist in the interpretation of the contract. The first amounts to adopting a presumption in contractual interpretation, and the second is a normative proposition about what sort of agreement reasonable people should have made. Neither, the appellant points out, assist in ascertaining what the parties actually agreed to. The appellant argues that the motion judge ought to have found that, because the contract did not address post-termination remuneration, there was no meeting of the minds, and therefore no entitlement to remuneration.

[20] The appellant is right to point out the limits of the techniques of textual interpretation where the contract to be interpreted was made orally and its provisions are sparse. *Dumbrell*, despite having been recommended to the motion judge by both parties, addressed a very different factual matrix and is of limited use in resolving this dispute. *Dumbrell* concerned the interpretation of a written employment contract, which was drafted after considerable negotiation and legal

assistance. For the most part, it addresses the methodology of contractual interpretation in written contracts. That is to say, the trial judge in *Dumbrell* had a lot of material to work with when it came time to figure out what it was the parties had agreed to. The circumstances here are substantially different. The motion judge was asked to resolve a problem the parties did not address when they agreed to a compensation scheme, and, unlike in *Dumbrell*, she did not have the benefit of a carefully-drafted written agreement from which she could draw inferences.

[21] This case has a superficial similarity to the long line of cases addressing the post-termination compensation of commissioned salespersons. In cases such as *Charles P. Rowen & Associates Inc. et al v. Ciba-Geigy Canada Inc.* (1994), 19 O.R. (3d) 205 (C.A.), courts have held that the obligation to pay commissions to commissioned salespersons survives termination of employment for sales completed prior to the termination. Those cases have a superficial appeal because of the powerful pull of the principle stated by Galligan J.A. in *Charles P. Rowen* (the “Rowen principle”), that ‘[w]here a principal accepts and benefits from the work performed on its behalf by its agent the principal, in the absence of an agreement to the contrary, is liable to pay for it.’ p. 20.

[22] Although it is sparse, the employment contract in issue here constitutes “an agreement to the contrary” with respect to WIP that was unbilled as at the time of termination. At least as it relates to Mr. Poupore’s contract, the Wallbridge

business model is based on contingency. The fees that Wallbridge earns, and the fees that it pays to Mr. Poupore, are a percentage of damage awards paid to their clients. Where there is no recovery of damages, there is no payment to the firm and no payment to Mr. Poupore. The contract therefore contemplates that not all work will be remunerated. And remuneration is not based on hours of work performed or on completion of discrete tasks such as drafting pleadings or conducting examinations for discovery. Remuneration is based entirely on resolution of a claim resulting in an award of damages for the client. Accordingly, just as the commissioned salesperson may receive no compensation for hours of work that do not result in a sale by that person, Mr. Poupore, working on contingency, will receive no compensation for those hours of work that do not result in a finalized judgment or settlement while he was at the firm.

[23] Mr. Poupore also did not establish a widespread practice to the contrary that would enable him to claim an implied contractual term. Although, on Mr. Poupore's evidence, two other lawyers who left Wallbridge were given some credit for the work they did on files that were settled after their departure, his evidence was clear that the decision to provide this compensation was entirely a matter of Wallbridge's discretion and not a contractual entitlement. Indeed, Mr. Wallbridge's autocratic nature was a recurrent theme in Mr. Poupore's testimony.

[24] Accordingly, there is no basis in contract for compensation for contributions made to files that remained at Wallbridge and were settled *after* Mr. Poupore's

departure, notwithstanding that Mr. Poupore's efforts contributed to the achievement of those settlements.

[25] The trial judge made no error, however, in determining that Wallbridge's obligation to pay Mr. Poupore for files settled *prior* to his departure survived the termination of the contract. In such cases, the Rowen principle applies. Mr. Poupore is therefore entitled to his share of fees for those files, whether those fees were paid to Wallbridge or paid to Diamond.

[26] Mr. Poupore cannot establish an entitlement to fees on the basis of his alternative argument for unjust enrichment. *Quantum meruit* does not apply where the services in question are within the scope of the contract and the contract establishes how the services will be remunerated. Mr. Poupore's work on the unbilled WIP was encompassed by the contract with Wallbridge. File work was not directly compensated and the parties contemplated that Mr. Poupore would bring the file to successful resolution to earn the commission. The contract did not contemplate part-payment for work that contributed, to some degree, to a job that was finished by others.

2. Did the respondent breach the contract?

[27] The appellant argues that the motion judge erred in finding that the respondent did not breach his duty of good faith to the appellant in the period between signing a contract with Diamond and his termination. The motion judge

made a finding that the respondent did not compete with the appellant during this period. That finding was supported by the evidence and entitled to deference. The motion judge found that the respondent maintained his billings during this time, to the benefit of both the appellant and their clients. He did nothing to undermine the appellant. The sole action of the respondent that furthered the interests of Diamond during this time was recommending a location for the future office. The motion judge did not err in characterizing this act as nothing more than planning for his departure, and not a breach of the duty of good faith.

3. Is the appellant entitled to damages?

[28] The appellant argued that if it had known that the respondent had signed a contract with Diamond it would have immediately terminated his employment and would not have been out of pocket the amounts paid to him between June 12, 2021 and October 21, 2021. Given that the motion judge made no error in finding that the respondent did not breach any duty owed to the appellant, there is no basis on which the appellant could advance this argument.

D. DISPOSITION

[29] I would allow the appeal in part and vacate paragraph 5 of the judgment. Although success on the appeal is divided, Mr. Poupore has had the greater success and is awarded costs of the appeal in the amount of \$25,000, all inclusive.

Released: June 15, 2026 "J.S."

"B.W. Miller J.A."

"I agree. Janet Simmons J.A."

"I agree. D.A. Wilson J.A."