

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Fasken Martineau DuMoulin LLP

Plaintiff

*Chad Pilkington, Joseph J. Stonehouse, Lawyers for  
the Plaintiff*

**– and –**

Suske Capital Inc., Family Retirement  
Residences Inc. and Stephen A. Suske (a.k.a  
Steve Suske)

Defendants

*Melvyn L. Solmon, Faraaz Damji, Lawyers for the  
Defendants*

**HEARD: April 9, 2026**

**REASONS FOR DECISION**

**G. DOW, J.**

[1] The plaintiff law firm, Fasken Martineau DuMoulin LLP sought summary judgment with regard to its claim for unpaid legal services billed to the defendants, Suske Capital Inc. and Family Retirement Residences Inc. They further alleged and sought judgment for the unpaid legal services accounts as against Stephen Suske pursuant to a Personal Guarantee signed by him March 8, 2021.

[2] The unpaid amount sought is \$1,018,968.16 for accounts rendered totalling \$1,733,642.78 of between December, 2018 and March, 2020.

[3] The defendants sought dismissal of the plaintiff law firm's motion and an order referring the accounts for assessment under either the *Solicitor's Act*, R.S.O.1990, c.S.15, section 4 or the

inherent jurisdiction of this Court citing special circumstances. This was first raised in an Amended Statement of Defence and Counterclaim, dated March 11, 2025.

### **Background**

[4] The plaintiff law firm relies on its Retainer Letter, dated December 5, 2017 confirming Suske Capital Inc.'s request that the law firm proceed to complete a reverse takeover transaction by which the newly created defendant, Family Retirement Residences Inc., would acquire retirement residence assets owned by development partners of Suske Capital Inc. Of note, that Retainer Letter sets out billings would occur every sixty days and attached what appears to be a standard form "Client Service Terms-Canada". The closest statement in those Terms to advising the client of its right to assess any account from the law firm is contained on the third page or sixth column in the "10. Questions and Concerns" which stated:

"If you have any questions or concerns about our Firm's services or accounts, please raise them with your client manager immediately. If you prefer, you can raise your questions or concerns with our Managing Partner for Ontario.

In the unlikely event that your concerns cannot be dealt with to your satisfaction, the rules governing the legal profession provide formal procedures for the review of accounts and other concerns by independent authorities. If you would like information about these procedures, please contact your client manager or our Managing Partner for Ontario."

[5] That retainer letter was repeated July 26, 2019, this time with the defendant, Family Retirement Residences Inc., being the client and additional transactions to be performed. The Client Services Terms-Canada form was again attached.

[6] The third document relied on by the plaintiff law firm was a June , 2020 "Acknowledgment of Indebtedness" form setting out the unpaid balance of \$1,070,488.29 (which as noted above, was an incorrect amount) and that the corporate defendants "had an opportunity to obtain independent legal advice prior to executing this Acknowledgment". It contained no mention of the client's right to assess the plaintiff law firm accounts.

[7] The final document relied on by the plaintiff law firm is a Personal Undertaking and Guarantee Agreement, dated March 8, 2021 signed by Stephen Suske which, at paragraph 2.3, included that the defendant, Stephen Suske "waives all defences in respect of the Indebtedness and the enforcement of the Engagement Letters". Again, no mention was made of the client's right to assess the plaintiff law firm accounts.

[8] These documents, between December, 2017 and March, 2021 reflect the deterioration in this solicitor-client relationship between the parties. The plaintiff law firm failed to render its accounts every sixty days as agreed upon with the August 31, 2018 invoice for \$906,137.62 representing five months of work. Other, subsequent invoices were also tendered more than sixty days following the previous invoice.

[9] By December 7, 2018, while making a \$500,000 payment towards the outstanding amount, the then President and CEO of Family Retirement Residences Inc., Farooq Moosa, emailed the plaintiff law firm that he was “reviewing all the time sheet dockets provided and will come back to you with some observations and questions/concerns regarding the invoices outstanding”. That did not occur.

### **Analysis**

[10] A solicitor-client relationship is not the same as that between the ordinary seller and purchaser of services. The solicitor has a fiduciary duty to his or her client. The defendants rely on and I agree “the relationship is one of trust and confidence from which flow obligations of loyalty and transparency.” (*Ledroit v. Rooplall*, 2011 ONSC 2751 at paragraph 44).

[11] Further, the Court of Appeal has indicated “public confidence in the administration of justice requires the court to intervene where necessary to protect the client’s right to a fair procedure for assessment of a solicitor’s bill. His admonition that solicitors should facilitate the assessment process when a client objects to a solicitor’s account rather than frustrating the process is more than just a guideline for law firms. It is essential. Clients must be able to assess their lawyers’ accounts or they will be or will perceive themselves to be powerless in the face of unfair billing practices. There can be little doubt that if the courts permit lawyers to avoid scrutiny of accounts inappropriate cases, the administration of justice will be brought into disrepute” (*Echo Energy Canada Inc. v. Lenczner Slaght Royce Smith Griffin LLP*, 2010 ONCA 709, at paragraph 36).

[12] Neither of the Letter Retainer Agreements, the Acknowledgment of Indebtedness or Personal Undertaking and Guarantee set out the defendant’s right to have the plaintiff law firm accounts assessed. Further, no evidence was tendered that this basic step occurred or was put in writing in any timely manner.

[13] The time limit for requesting and assessment of a solicitor’s account under Section 4 of the *Solicitor’s Act*, R.S.O.1990, c.S.15 sets out the requisite time period. This is subject to an extension under the two-year limitation period set out in *Limitations Act*, 2002 R.S.O. 2002, c.24. Assessment of law firm accounts beyond this time can be ordered if the client demonstrates “special circumstances” (*Guillemette v. Doucet*, 2007 ONCA 743, at paragraphs 13 and 14). Here, the last invoice was dated November 11, 2020 and the defendant does not raise its desire to assess the plaintiff law firm accounts until amending its Statement of Defence in March, 2025.

[14] The Court of Appeal addressed the “interpretation of the interaction of the *Limitations Act* and the *Solicitors Act* means that there is no absolute time bar against applications for the assessment of lawyer’s accounts. This result may seem inconsistent with the purpose underlying the *Limitations Act*. However, solicitor’s accounts have always been treated differently than other debts and even other professional accounts. A superior court has an inherent jurisdiction to review lawyer’s accounts entirely apart from any statutory authority (*Guillemette v. Doucet*, *supra* at paragraph 35).

[15] In short, are the circumstances in this matter sufficient to invoke this Court's inherent jurisdiction to dismiss the summary judgment motion and order the plaintiff law firm to proceed with assessment of its account? In this regard, in support of special circumstances existing, the defendants relied on:

(a) the plaintiff law firm's awareness from the December 7, 2018 email of the defendant's concerns with the fees being charged;

(b) the plaintiff law firm's failure to advise the defendants, as clients to whom it owed a fiduciary duty, of the process by which the accounts could be assessed;

(c) a denial of assessment of the accounts would undermine public confidence in and bring the administration of justice into disrepute;

(d) the quantum sought was very large;

(e) the plaintiff law firm had already acknowledged an instance of overcharging having reduced the amount attached to the Acknowledgment of Indebtedness being \$1,70,488.29 which exceeded a fee cap contained in the Retainer of \$24,936.56;

(f) the outcome sought was not attained, that is neither the reverse takeover or public offering was completed thus rendering the legal services provided of questionable value.

[16] To the contrary, the plaintiff law firm relied on the following circumstances:

(a) as a key decision maker in the defendant corporations, Stephen Suske was a sophisticated businessman with access to lawyers within his corporations and personally;

(b) Stephen Suske made admissions of his awareness of the nature and effect of the documents he had signed;

(c) the Acknowledgment of Indebtedness expressly provided for the opportunity to obtain independent legal advice;

(d) the Personal Undertaking and Guarantee specifically waived "all defences in respect of the Indebtedness".

[17] As a fact driven exercise of judicial discretion, I prefer the position of the defendants and I agree with the statement in *Metzler et al. v. Shier et al.*, [2002] O.J.No. 4988 that "I cannot understand why any solicitor with an ounce of professional pride would stoop to arguing that a client has lost his right to tax by an act done during the course of the Retainer except in the most unusual circumstances and I find it difficult to conceive what those circumstances could be".

[18] I am reinforced by the statement in *Borden Ladner Gervais LLP v. Cohen*, 2005 CanLII 21114 (Ont. S.C.J.-Div.Ct.) "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. Its importance is emphasized by the Commentary to Rule 2.08 of the Rules of Professional Conduct: a lawyer should inform a client about his or her rights to have account assessed under the *Solicitor's Act*" (at paragraph 12). None of the documented or relied upon material from the plaintiff law firm advised its client, in any direct or coherent form, of the client's right to have any of the law firm's accounts assessed as provided for under the *Solicitor's Act*, *supra*.

### **Conclusion**

[19] I prefer and find that special circumstances have occurred. As a result, the plaintiff law firms' motion is dismissed and I order their accounts to be referred for assessment.

### **Costs**

[20] The plaintiff uploaded to Case Center both a Bill of Costs, apparently for the action, and a separate Costs Outline regarding its efforts on this motion. The Bill of Costs sets out a partial indemnity claim of \$72,157.59 for fees and disbursements totalling \$3,130.59 plus HST of \$9380.49 for a total of \$82,133.43. Using substantial indemnity fees, the amount rises to \$108,133.60 inclusive of fees, HST and disbursements.

[21] The Costs Outline for the motion sets out fees of \$115,653 and disbursements totalling \$3,175.25 plus HST of \$15,403.60 for a total of \$134,231.85. Using substantial indemnity fees, the amount rises to \$177,794.48 inclusive of fees, HST and disbursements.

[22] By comparison, the Bill of Costs of the defendants, using partial indemnity rates, total \$39,057.00 for fees and disbursements of \$3,208.39 plus HST of \$5077.41 for a total of \$47,342.80.

[23] I urge the parties to agree on costs. If they cannot, the party seeking costs shall serve on the other side and email to me (to my assistant's address, [harleen.purewal@ontario.ca](mailto:harleen.purewal@ontario.ca)) its typewritten submissions not exceeding five pages in accordance with Rule 4.01 on or before July 23, 2026. The responding submissions shall be served on the other side and emailed to me, identically limited, on or before August 24, 2026. This limitation does not include attaching any relevant document being relied upon, such as a Rule 49 Offer to Settle.

---

Mr. Justice G. Dow

**Released: June 23, 2026**

**CITATION:** Fasken Martineau DuMoulin LLP v. Suske Capital Inc. et al, 2026 ONSC 3644  
**COURT FILE NO.** CV-23-00695852-0000  
**DATE:** 2026-06-23

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

Fasken Martineau DuMoulin LLP

Plaintiff

– and –

Suske Capital Inc., Family Retirement Residences Inc.  
and Stephen A. Suske (a.k.a Steve Suske)

Defendants

---

**REASONS FOR DECISION**

---

**Mr. Justice G. Dow**

**Released: June 23, 2026**