CITATION: *2138746 Ontario Inc. and Adler v. Weirfoulds LLP*, 2026 ONSC 5629
COURT FILE NOS.: CV-18-00589917-0000
CV-18-00594936-0000
DATE: 20261020

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ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:	)	
	)	
2138746 ONTARIO INC. and KERRY ADLER	)	*Robert G. Plate*, for the Applicant
Applicants	)	
	)	
– and –	)	
	)	
WEIRFOULDS LLP	)	*Sean G. Foran*, for the Respondent
Respondent	)	
	)	
	)	**HEARD:** October 5, 2026
	)	

REASONS FOR JUDGMENT

JOHN CALLAGHAN J.

[1] The applicant opposes the confirmation of an assessment officer's report relating to solicitor and client account. The assessment was over six days. There was oral testimony before the Assessment Officer, however, there is no transcript of that evidence before me.

[2] I reviewed the test for opposing an assessment in *Ah Lim v. Chagpar & Associates*, 2026 ONSC 168 (CanLII), which I repeat here:

> [18] A motion to oppose confirmation of a Report and Certificate of Assessment is in the nature of an appeal, not a hearing de novo. The task for this Court is to determine if the Assessment Officer erred as a matter of principle. As stated by the Court of Appeal in Samuel Eng and Associates v. Ho, 2009 ONCA 150, at para. 1:
>
> > It is settled law that on an appeal from an assessment officer, the court is only concerned with questions of principle not with questions of amount or how the assessment officer exercised his discretion unless the decision is so unreasonable as to amount to an error in principle.

> [19] Where the appeal addresses an error of law, the standard of review is correctness. Where the error is alleged to have been the application of the facts to the applicable legal principles, the standard of palpable and overriding error is to be applied. This standard requires deference to the fact finding of the Assessment Officer, and the assessment may only be varied where the determination is either not supported by any facts or there is a misapplication of a legal principle which is inextricably linked to the finding. In the case of an assessment there is an overriding ability to review an award that is unreasonable.
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> [20] As succinctly stated by the Court of Appeal, "The hearing is an appeal, not an opportunity for the reviewing court to rehear the assessment and come to its own conclusion as to what is reasonable, absent an error in law, misapprehension of the evidence, palpable and overriding error on a factual matter, or an assessment amount that is so unreasonable as to constitute an error in principle": Rabbani v. Niagara (Regional Municipality), 2012 ONCA 280, 106 L.C.R. 235, at para. 6.

[3] In this case, the Assessment Officer correctly identified the governing authority in *Cohen v. Kealey & Blaney (1985)*, 10 O.A.C. 344 (C.A.), which sets out nine factors to be considered on an assessment: at p. 346. In applying those factors, the Assessment Officer has the discretion to assign weight to each factor as deemed appropriate in the circumstances. In lengthy reasons, the Assessment Officer addressed each of the above factors and, in applying the factors, he reduced the account by approximately 20%.

[4] The underlying proceeding involved a land dispute that resulted in a trial. There was a claim and counterclaim relating to a claim of a right of way and claim of adverse possession. Ultimately, the Applicant lost and was ordered to pay costs. The Assessment Officer found, and it is not contested before me, that the Applicant was a difficult client. He did not attend discoveries resulting in the inability of the Respondent lawyer to examine the opposite side. The Applicant did not attend the pretrial notwithstanding he was required to do so. He was not responsive to the Respondent such that the Respondent brought a motion to get off the record, which it ultimately abandoned. The Applicant did not attend the trial. It is clear from the Assessment Officer's report that the conduct of the Applicant caused significant difficulty for the Respondent in prosecuting the case and in exchanging information with the Applicant.

[5] In applying the applicable factors, the Assessment Officer assessed the Respondent's Bill of Fees and Disbursements at $344,226.89. This represented a reduction of approximately $86,000 from the amount claimed, being an approximate 20 percent global reduction. After deducting what had already been paid, the Applicant was ordered to pay the Respondent the outstanding balance of $156,732.52.

Issues

[6] The Applicant opposes the assessment on grounds of principle. As addressed below, I find that the grounds raised amount to an appeal of the findings of fact of the Assessment Officer and not matters of principle. The findings of fact are owed deference by this Court. There was no

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argument by Applicant seeking to set aside the Assessment Officer's findings on the palpable and overriding standard and, in any event, I see no basis to set aside the findings on that basis.

[7] The Applicant raises several arguments. The thrust of his argument is that the Assessment Officer erred as a matter of principle because he failed to consider that the Respondent did not provide sufficient budgets as the matter progressed, particularly during the trial and that the Applicant was not provided a proper assessment of the risk of litigation leading, in part, to a failure of the Applicant to appreciate the risks associated with the litigation.

Discussion

[8] The Applicant states that the Assessment Officer erred by failing to consider that the Respondent did not provide sufficient estimates of the anticipated billings. The Assessment Officer did address this issue and expressly found that the Respondent did not provide sufficient estimates of the anticipated fees. He then went on to consider this deficiency in assessing the accounts. As he stated: "My task is now to consider the extent to which the fees should be reduced as a result of the fee billings exceeding the estimates or, in other words, as a result of the Solicitors not reasonably fulfilling their responsibility to the Client".

[9] The Assessment Officer then reviewed the applicable legal principles, including the rules of professional conduct for lawyers. In considering this issue, the Assessment Officer noted that the lack of co-operation of the Applicant throughout the process, including the trial, contributed to the costs exceeding the budget. He found it was incumbent on the Respondent to advise the Applicant of any revision to the budget, including due to the" unresponsiveness and seeming intention" by the Applicant to the litigation. In short, the Assessment Officer found the Respondent wanting in addressing the budgets. It is for this reason he largely reduced the accounts by 20%.

[10] The argument of the Applicant was that the deduction should have been greater. In effect, he seeks to largely hold the Respondent to the estimate. However, an estimate is just that. It is not a guarantee. In this case, the Applicant was not co-operative and, as found by the Assessment Officer, his conduct was a significant reason for the increase over the budget. In my view, the Assessment Officer was entitled to consider the entire circumstances in weighing this factor, including the conduct of the Applicant, in assessing the appropriate deduction. He was clear that the amount of the deduction reflected the total circumstances, including the Applicant's conduct which increased the fees over the budget. In my view, there was no error in principle by the Assessment Officer in addressing this issue.

[11] The Applicant states he was not kept informed as to the status of the litigation. He points to the fact that there was only one comprehensive reporting letter. However, the Assessment Officer expressly found that "There was an ongoing flow of communications from the Solicitors to the Client regarding the progress and status of the litigation, and sufficient information was provided in order to enable Mr. Adler to make informed decisions." Notwithstanding this finding, the Applicant says there was insufficient evidence for the Assessment Officer to make this finding. This was a six-day hearing, and there is no transcript. It is difficult for this Court to determine

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whether the finding is so devoid of evidence as to be an error in principle. The Respondent points out that it provided a comprehensive reporting letter after the pretrial because it was only after the pretrial that the Respondent had the expert reports and anticipated evidence of the other side. As pointed out by the Assessment Officer, the failure of the Applicant to attend his discovery meant that the Respondent was unable to examine the opposing side. In short, it was only at the pretrial stage that the Respondent had the ability to make a comprehensive assessment. As found by the Assessment Officer, the Respondent's report not only accurately assessed the risks but also recommended a settlement offer which was only taken up two weeks before trial. In its reporting letter, the Respondent advised that the case cried out for a settlement. A further memo was sent addressing the cost impacts of a rule 49 offer made by the opposing side, which was rejected. In the end, the Applicant was ordered to pay $500,000 in costs because he failed to accept the offer of the opposing side.

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[12] In my view, on the facts before me, the Assessment Officer properly dealt with whether the Applicant was both properly advised of the risk of litigation and also the impact of any offer to settle. There is no basis to conclude that the Applicant was not properly informed of the litigation risks.

[13] The accounts included fees for an aborted motion by the Respondent to be removed as the lawyer of record. It is argued that it was an error of principle not to deduct those amounts when assessing the accounts. I disagree. The Assessment Officer was alive to the fact that such amounts are often deducted but he expressly found that the Respondent's motion was necessary as the Applicant was uncooperative and unresponsive with the Respondent. The Assessment Officer essentially found that it was the Applicant's actions that created the need for the motion. In the circumstance, it was not an error of principle to assess the Respondent's fees and costs of preparing the motion material as appropriate costs payable by the Applicant.

[14] Finally, it was argued that the Assessment Officer took 21 months to release a decision. It is argued that this undermines any findings of credibility of the Assessment Officer. While the delay is far from ideal, I am satisfied that the decision and findings of the Assessment Officer are supported by the record before me. As such the delay does not undermine the Assessment Officer's decision.

[15] Suffice it to say, I see no error in the Assessment Officer's reasoning. He was applying a multi-factored test where he was entitled to weigh all the factors. In doing so, the Assessment Officer considered the relevant evidence, addressed the issues raised by the parties, and exercised his discretion in a reasoned manner. I see no basis to intervene. The application is dismissed.

[16] The Respondent is entitled to its partial indemnity costs. I have reviewed the costs outlines of both parties. This was a matter of modest complexity. Having reviewed the costs outlines, I am setting costs at the all-inclusive amount of $9,000. This is an amount that it reasoanble and proportionate to the matters in issue. It is also an amount which a losing party in a matter such as this could reasonably expect to pay.

Callaghan J.

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