
CANADA / JUDGMENT

Leduc v. Dufour

2026 ONCA 3

COURT

Court of Appeal for Ontario

DECIDED

8 January 2026

Source: norma.lexum.com · Research copy typeset by Esheria. Not court-issued or certified.

Leduc v. Dufour

Collection

Decisions of the Court of Appeal

Date

2026-01-08

Neutral citation

2026 ONCA 3

Docket numbers

COA-25-CV-0131

Judges

van Rensburg, Katherine; Miller, Bradley; Sossin, Lorne

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Leduc v. Dufour, 2026 ONCA 3

DATE: 20260108

DOCKET: COA-25-CV-0131

van Rensburg, Miller and Sossin JJ.A.

BETWEEN

Tyler Leduc, an infant under the age of eighteen years by his Litigation Guardian, Angele Vanier, Angele Vanier, and Angele Vanier, Litigation Administrator of the Estate of Jean Louis Leduc

Plaintiffs (Respondents)

and

Meghan O'Brien Estate Trustee During Litigation for the Estate of the Late Marc Dufour, Ted Tichinoff Litigation Administrator for the Estate of the Late Marc Dufour, Marc Dufour, or in the alternative, The Estate of Marc Dufour, France Duclos, Jean McKay, Lily Bugg, Tina Hood, Glenda Petrenko, Joanne Despatie, Tina Hart, Krista Zielger, Erica Salo, Lyne Baird, Sally Edward, and Health Sciences North (formerly Sudbury Regional Hospital)

Defendants

Geoffrey D.E. Adair, K.C., for the appellant Wallbridge Wallbridge

Jonathan C. Lisus and Zain Naqi, for the respondents

Heard: November 25, 2025

On appeal from the order of Justice M. Gregory Ellies of the Superior Court of Justice, dated December 10, 2024, with reasons reported at 2024 ONSC 6882.

REASONS FOR DECISION

A. Overview [1] The respondent, Tyler Leduc, suffered a hypoxic ischemic brain injury during his birth at the Sudbury Regional Hospital in November 2009. A year later, he was diagnosed with cerebral palsy. In 2011, his mother, the respondent Angele Vanier, retained Almeda Wallbridge of the appellant law firm, Wallbridge Wallbridge, to investigate a claim of medical malpractice.

[2] Following a lengthy period of investigation, during which Mrs. Wallbridge gathered records from the hospital and elsewhere and retained numerous experts to provide opinions on the issues of medical negligence and causation, Mrs. Wallbridge and Ms. Vanier executed a contingency fee agreement in August 2015 (the "2015 CFA"), and another in May 2018 (the "2018 CFA"). [1] Both agreements provided that the appellant would be paid one third of the compensation (including interest but not costs and disbursements) received from Mr. Leduc's claim, provided the action settled before trial. If the appellant was required to prepare for or to conduct a trial, the 2018 CFA provided that the appellant was entitled to charge 25 percent of the settlement or judgment, plus a prescribed hourly rate for trial preparation and trial time, disbursements plus HST. [2] Under both agreements, if there was no recovery, no fees or disbursements would be charged.

[3] After the 2015 CFA was signed, Mrs. Wallbridge commenced an action against the attending obstetrician, the hospital and the nursing staff. Examinations for discovery were completed in 2018, after which Mrs. Wallbridge began to obtain expert reports on the issue of damages.

Subsequently, the nursing defendants requested testing to determine whether the cause of Mr. Leduc's cerebral palsy was genetic (this was ruled out). A mediation scheduled for November 2020 was postponed when the nursing defendants served an expert report suggesting that Mr. Leduc's injuries were caused by meconium-induced vascular necrosis. This necessitated further testing, resulting in competing expert reports delivered in 2021. After an unsuccessful mediation and two judicial pre-trials in 2021, the matter was eventually scheduled for an eight-week trial commencing in September 2023. The action eventually settled in January 2023, for an all-inclusive sum of \$14 million.

- [4] In February 2023, the Wallbridge firm, on behalf of the respondents, moved under r. 7 of the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 for approval of the settlement and the fee payable under the 2018 CFA. After deduction of the defendants' costs contribution and disbursements, the damages portion of the settlement was calculated to be approximately \$12.325 million. The appellant's contingency fee (exclusive of HST) equaled approximately \$4.108 million.
- [5] The motion judge ultimately approved the overall settlement.[3] However, he found the 2018 CFA to be neither fair at the time it was made, nor reasonable at the time of the motion. He disallowed the proposed fee and approved a fee of \$3.25 million plus HST and disbursements in its place.
- [6] For the reasons that follow, we see no reversible error with respect to the motion judge's determination that the 2018 CFA was not fair when the agreement was entered into. In light of this conclusion, it is unnecessary to consider the motion judge's finding with respect to its reasonableness.

B. Decision below [7] The motion judge began his analysis by noting that both the 2015 CFA and the 2018 CFA did not strictly comply with the requirements for CFAs set out in Contingency Fee Agreements, O. Reg. 195/04 (the "Regulation").[4]

- [8] He then turned to analyze whether the 2018 CFA was fair and reasonable, and thus enforceable under s. 24 of the Solicitors Act, R.S.O. 1990, c. S.15. In doing so, the motion judge applied the well-developed framework articulated in *Raphael Partners v. Lam* (2002), 61 O.R. (3d) 417 (C.A.).

Fairness

- [9] The motion judge concluded the agreement was not entered into fairly. After identifying all of the formal requirements that were not complied with in the 2018 CFA, he acknowledged that technical non-compliance with the Regulation does not necessarily result in adverse consequences for the non-compliant solicitor. He noted that there were cases suggesting that "substantial compliance" was sufficient and he stated that he was "not inclined to be as forgiving as some of [his] colleagues": at para. 44. He emphasized the consumer protection role of the Regulation. In his view, the requirements of the Regulation "were a means of providing crucial pieces of information designed to ensure that the lawyer-client imbalance

was attenuated”, and “the further a CFA strays from compliance with governing legislation and regulations”, the more difficult it will be to find that it was entered into fairly: at para. 49.

- [10] The personal circumstances of Ms. Vanier, as Mr. Leduc’s litigation guardian, were at the forefront of the motion judge’s analysis. In considering them, he found that she was a vulnerable client based on a number of circumstances, including that she only had a high school education, her only prior experience with retaining a lawyer was in connection with a single real estate transaction, and her professional experience was largely confined to working as a heavy equipment operator before Mr. Leduc was born. Additionally, Ms. Vanier’s life changed drastically after Mr. Leduc’s injury. She quit her job to look after Mr. Leduc. At the time the CFAs were entered into, Ms. Vanier’s life was largely devoted to figuring out how to care for her son on her and her now-deceased husband’s modest incomes. The motion judge found that Ms. Vanier was, by all accounts, in dire straits when she engaged Mrs. Wallbridge. Given Ms. Vanier’s vulnerability, the motion judge found that both CFAs should have more closely complied with the Solicitors Act and Regulation.
- [11] The motion judge also found that aspects of both CFAs were drafted in a way that could lead to disproportionately large fees for the firm, in some cases in excess of what the respondents would have recovered in damages. Neither CFA referenced that there were limits on counsel’s fees or that the agreement would need to be reviewed and approved by a judge.

Reasonableness

- [12] The motion judge also concluded that the fee was not reasonable at the time of the hearing. Under that branch of the Raphael Partners test, the motion judge examined the time Mrs. Wallbridge expended on the claim, its legal complexity, the result achieved, and the risk Mrs. Wallbridge assumed.
- [13] He reasoned that, although Mrs. Wallbridge exercised skill and experience in prosecuting an inherently difficult claim, the result achieved fell short of the plaintiffs’ and defendants’ damages assessments and Mr. Leduc’s needs. Moreover, the motion judge assessed the risk to the appellant at several points in time, concluding that the odds of success were strong when the 2018 CFA was entered into, and even stronger at the time of the judicial pre-trials in 2021. These factors, assessed together, militated towards finding that the 2018 CFA was not reasonable as of the date of the hearing.
- [14] The motion judge also noted that when approving a settlement where legal fees were agreed to by a litigation guardian, the court must consider whether the party under disability needs to be protected from “any mistakes which may have been made by the litigation guardian”: *Cogan (Re)* (2007), 88 O.R. (3d) 38 (S.C.), at para. 20. Notwithstanding the fact that Ms. Vanier was initially eager to accept the settlement, the motion judge determined that she was mistaken in agreeing to the terms of the 2018 CFA. This was because the 2018 CFA’s fixed

percentage, regardless of the amount of the settlement, resulted in an unreasonable fee.

Remedy

[15] The motion judge substituted what he concluded was a reasonable fee of \$3.25 million, plus fees and disbursements. He did so according to a “staggered percentage” model, according to which the appellant was entitled to 33 percent of the first \$5 million recovered as damages, 25 percent of the next \$5 million, and 15 percent of the remaining amount recovered as damages.

C. Issues on Appeal: (1) Did the motion judge err in determining that the 2018 CFA was not fair at the time it was made?

(2) Did the motion judge err in determining that the 2018 CFA was not reasonable at the time of the motion?

D. Standard of review [16] The fairness and reasonableness of a fee agreement between a solicitor and client is a question of mixed fact and law, reviewable for palpable and overriding error, absent an error in principle: *Chrusz v. Cheadle LLP*, 2010 ONCA 553, 272 O.A.C. 1, at para. 30; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 37.

E. analysis [17] It is not in dispute that a contingency fee agreement, in order to be approved by the court, must be both “fair” at the time it was entered into and “reasonable” at the date of the hearing to approve it: *Raphael Partners*, at paras. 37-58. A contingency fee agreement can be declared void, cancelled or disregarded if it is found to be either unfair or unreasonable: *Henricks-Hunter v. 814888 Ontario Inc. (Phoenix Concert Theatre)*, 2012 ONCA 496, 294 O.A.C. 333, at para. 13. Therefore, in order to succeed on the appeal, the appellant must establish that the motion judge erred in both his conclusion that the 2018 CFA was not fair, and his conclusion that it was not reasonable.

The motion judge did not err in concluding the 2018 CFA was not fair

[18] In *Raphael Partners*, at para. 37, this court described the question to be considered as follows:

The fairness requirement of s. 24 of the Act is concerned with the circumstances surrounding the making of the agreement and whether the client fully understands and appreciates the nature of the agreement that he or she executed.

[19] The onus is on the solicitor to show that the way in which a fee agreement was obtained was fair: *Raphael Partners*, at para. 37.

[20] According to the appellant, the motion judge’s analysis of the fairness issue was flawed, as he relied too heavily on the appellant’s non-compliance with the Regulation. The appellant also contends that the motion judge erred in finding that Ms. Vanier was a “vulnerable client” whose hopes had been raised by the prospect of success in the litigation.

- [21] The appellant further asserts that the motion judge ought to have found the 2018 CFA to be fair for several reasons. First, because no one pushed Ms. Vanier into agreeing to it. Additionally, the appellant argues that Ms. Vanier clearly understood the agreement's "bottom line", was informed by its terms that she could seek independent legal advice, and acknowledged that she had the right to ask any questions she wished with respect to it.
- [22] In support of the fairness of the 2018 CFA, the appellant relies on a series of facts that it contends the motion judge failed to consider. It argues that the 2018 CFA itself had a simple formula that carved out costs and allowed Ms. Vanier to know exactly what the fee would be, which she acknowledged she understood. Similarly, the 2018 CFA specifically informed Ms. Vanier that she could consult another lawyer with respect to its form and content. According to the appellant, Ms. Vanier knew before signing either CFA that the potential damages and the appellant's resultant fee would be high, and that Mrs. Wallbridge advised her that the amount of the settlement and its allocation would have to be approved by the court. Finally, the appellant submits that Ms. Vanier, even after obtaining independent legal advice regarding the proposed fees, did not seek to resile from the 2018 CFA.
- [23] We do not give effect to this ground of appeal.
- [24] The motion judge recognized that the regulations governing CFAs serve as a form of consumer protection legislation, and that the requirements of the regulation governing CFAs were a "means of providing crucial pieces of information designed to ensure that the lawyer-client imbalance was attenuated". It was not unreasonable for him to observe that "[c]ompliance with the governing legislation was particularly important in this case" because of Ms. Vanier's vulnerability and the need for crucial information "to level the playing field between the lawyer and the client". And, contrary to the appellant's submission, the motion judge's conclusion that Ms. Vanier was a vulnerable client was firmly grounded in the evidence and reveals no reversible error.
- [25] Nor do we agree with the appellant's submission that the motion judge failed to consider relevant evidence. He specifically referred to Mrs. Wallbridge's evidence of what she explained to Ms. Vanier, however, he said he had trouble with this evidence because the elements Mrs. Wallbridge referred to were not included when the 2018 CFA was executed; instead, he accepted Ms. Vanier's evidence that she believed this was a standard form agreement and she was unaware at any time that the CFA required court approval.
- [26] Further, the motion judge held, at para. 53, that "one piece of ... information was particularly important": the 2015 and 2018 CFAs both contemplated scenarios where the appellant's fees could exceed Mr. Leduc's recovery, yet neither agreement notified Ms. Vanier this was improper: at paras. 53-56. He explained, at para. 56:

The 2018 CFA also included an example of the calculation of the contingency fee in the event that the case was settled after trial preparation began. Like the example in the 2015 CFA, the example in the 2018 CFA included a costs award of 20 percent of the damages, exclusive of HST and disbursements. Also like the 2015 example, the overall percentage charged equated to 45 percent.

However, had the costs awarded at trial risen to 25, 30, or even 50 percent, as they might have through the skillful use of a formal offer to settle, the Wallbridge firm would have collected more in fees than the client would have recovered in damages. Nowhere in either the 2015 or the 2018 CFA was it explained to the client that this was improper and that the lawyer could not recover more in fees than the [client] recovered in damages.

- [27] The appellant now argues that the example discussed above regarding the fees charged post trial-preparation reveals a mathematical error in the 2018 CFA. Without this error, the appellants' fees would not exceed Mr. Leduc's recovery. In our view, however, the motion judge's point remains unaffected. The formula set out in the 2018 CFA could have resulted in the appellant receiving more than Mr. Leduc, which is prohibited: Regulation, s. 7.
- [28] The appellant also takes issue with the motion judge's reference to the fact that he was "not inclined to be as forgiving as some of [his] colleagues in relation to the 2018 CFA's compliance with the Regulation.
- [29] This passing comment by the motion judge does not point to any reversible error. Non-compliance with the Regulation does not render a CFA void or unenforceable; rather in each case the court must determine whether the CFA is fair and reasonable. In making this determination it is relevant whether any failings in the contents of the CFA are material to the nature of the proceedings: *Bogue v. Miracle*, 2025 ONCA 188, at paras. 19-20. Given what the motion judge viewed as significant non-compliance with the Regulation and Ms. Vanier's vulnerability, he was not convinced that the 2018 CFA was entered into fairly. Whether or not other judges in other cases[5] may have been more "forgiving" of instances of non-compliance with the Regulation is irrelevant to the analysis.
- [30] For these reasons, we see no basis to interfere with the motion judge's finding that the appellant had not shown the 2018 CFA was fair. Consistent with the required approach in *Raphael Partners*, he focused on "the circumstances surrounding the making of the agreement and whether the client fully [understood and appreciated] the nature of the agreement that [she] executed".
- [31] As this conclusion disposes of the appeal, we do not need to consider the motion judge's additional finding that the 2018 CFA was not reasonable. That said, nothing in these reasons should be taken as an endorsement of the motion judge's analysis on this prong of the *Raphael Partners* test. In particular, we do not agree with the motion judge's approach to the assessment of the risk undertaken by the appellant that focused on the risk of non-payment at the time the case was settled. Rather, "[t]he reasonableness of the fee should of course be assessed by reference to the risk as it appeared at the time the agreement was negotiated, and not as of the time of the assessment, when it may falsely appear with the benefit of hindsight that the risk of failure was minimal all along": *Laushway Law Office v. Simpson*, 2011 ONSC 4155, 336 D.L.R. (4th) 632, at para. 131, citing *Gavin MacKenzie, Lawyers & Ethics: Professional Responsibility and Discipline* (Toronto: Thomson Reuters Canada, 2018) (loose-leaf updated April 2025), at § 12:1, appeal to Ont. C.A. dismissed for delay, 2013 ONCA

317.

F. Disposition [32] Accordingly, the appeal is dismissed.

[33] If the parties are unable to agree on costs, brief submissions of no more than two pages, together with bills of costs, may be submitted to the court within 10 days of the release of these reasons.

“K. van Rensburg J.A.”

“B.W. Miller J.A.”

“L. Sossin J.A.”

- [1] Mr. Leduc’s late father, Jean Louis Leduc, also signed a duplicate version of the 2015 CFA. He did not sign the 2018 CFA, and he passed away in 2020. The 2018 CFA was entered into to address certain changes in the law.
- [2] Under the 2015 CFA the fee also changed to 25 percent if the matter went to trial, but the client was required to assign the costs awarded at trial to the appellant.
- [3] The various steps in the court approval process, including the respondents’ retainer of other counsel in making the application, are briefly outlined in the motion judge’s costs reasons reported at 2025 ONSC 2935.
- [4] This was the regulation that governed the making of contingency fee agreements when the 2015 and 2018 CFAs were entered into. It has since been revoked and replaced by Contingency Fee Agreements, O. Reg. 563/20.
- [5] In any event, we do not regard any of the other cases referred to by the motion judge in the context of this comment at para. 44 of his reasons as revealing a “more forgiving” approach.

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF’s page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://norma.lexum.com/coa/coa/en/item/23834/index.do>

CASE PAGE <https://chat.esheria.ai/case-law/canada/leduc-v-dufour-2026-onca-3>

Prepared on 26 October 2026 · Esheria