

# Appeal court ruling on contingency fees a lesson for lawyers



Although the result was positive for the law firm involved, a recent Court of Appeal ruling that ordered an accounting firm to pay legal fees run up under a contingency agreement is ultimately a lesson to lawyers not to overreach in these situations, Toronto civil litigator [Sarah O'Connor](#) tells *Law Times*.

The case centred around accountancy firm BDO Dunwoody, which hired lawyers from an Ontario office of international law firm Miller Canfield Paddock and Stone LLP in 2007 to sue the Canada Revenue Agency and the federal Department of Justice for wrongful prosecution on behalf of two employees, *Law Times* reports.

The article notes that the retainer provided for a contingency fee to the law firm of up to 25 per cent of any recovery, or, alternatively, if BDO cancelled the firm's services for any reason, it would pay for all the law firm's billings up to that point.

However, *Law Times* notes that solicitor-client relations deteriorated when the claim was largely struck out on a motion by the defendants in 2012. Miller Canfield informed its client that it was incapable of carrying out the appeal and recommended appellate counsel.

"A superior court judge found the law firm's refusal to conduct the appeal amounted to repudiation of the contingency agreement, and it absolved BDO from its responsibility to pay for Miller Canfield's fees to that point, which amounted to \$427,892," says the article.

On appeal, however, Ontario Appeal Court Justice John Laskin wrote: "When BDO accepted the Law Firm's repudiation of the retainer agreement and told it to take no further steps in the proceeding, BDO cancelled the Law Firm's services within the meaning of the agreement's termination provision," referring to an email from BDO's lawyer to Miller Canfield.

As such, the accountancy firm has been ordered to pay the legal bill of more than \$400,000.

As O'Connor, principal of [O'Connor Richardson Professional Corporation](#), says in the article, that was a very expensive email.

"It looks like one more example of appellate courts sticking to the fundamental tenets of contract law, and it's that one e-mail that they're hanging it all on," she says.

Despite the favourable result for the law firm, O'Connor tells *Law Times* that the decision is a lesson to lawyers not to bite off more than they can chew in contingency fee matters.