

## New Limitation Period for Assessing Lawyers' Accounts in Ontario

[Christian v. William Shanks/Cheadles LLP, 2009 CanLII 40559 \(ON SC\)](#)

Par **Antonin I. Pribetic**



The recently released Ontario decision in [Christian v. William Shanks/Cheadle LLP, 2009 CanLII 40559 \(ON S.C.\)](#) demonstrates the continuing confusion over the applicable limitation period for assessing a lawyer's accounts in Ontario.

The facts in *Christian v. Shanks/Cheadles LLP* are straightforward. In the Fall of 2005, the applicant (Christian) retained the respondent (Shanks) to act on her behalf in divorce proceedings and signed a retainer agreement on September 12, 2005. Pursuant to the terms of the retainer agreement, detailed interim billings were sent to Christian in 2006 and 2008. In May of 2008, a Trial Management Conference was held, but due to incomplete information, trial scheduling was delayed. During this time, the applicant claimed she discussed her outstanding account of \$31,661.50 with her solicitor and instructed that she was terminating the retainer and wished to have her file transferred to new counsel for completion. Further discussions resulted in a reduction of the account to \$27,000, which was paid in full on October 14, 2008, upon which the respondent lawyer released the client's file. The applicant continued to complain about the amount charged and subsequently she attended before the Registrar of the Supreme Court in Thunder Bay and obtained a date for assessment of the bill. In February 2009, she further attended the court and obtained the Order for the Assessment from the Registrar. Subsequently, the applicant retained new counsel, who thereafter commenced an application for assessment on April 22, 2009.

The respondent lawyer then brought a Motion to Quash a Registrar's Order for an assessment of a solicitor's bill under [section 3](#) of The [Solicitors Act](#). Surprisingly, the application judge quashed the application for assessment, stating:

"[2] Regarding the Motion to Quash, the parties are in agreement that the bill (the last interim billing) was delivered August 29, 2008 which covered work from September 2, 2005 to August 29, 2008. However the Order for Assessment obtained from the Registrar was dated February 11, 2009, months beyond the one month time limit under Section 3 of the Act. Consequently, it should be quashed, and it is so ordered."

Despite the misapplication of the former limitation period under [s.3\(b\)](#) of the [Solicitors Act](#), the application judge found special circumstances warranting an assessment, stating in part: "[9] In coming to my decision, I would first say that I can see very little wrong with the Respondent's Retainer. Many of the complaints about the fees, or the people being charged for, and their rates etc. could easily have been found out by a phone call after receiving one of the interim accounts.

[10] I am, however, quite concerned that a large proportion of the work done and billed for was not done by the solicitor but by law office staff. This leads me to wonder whether the account should be assessed so the solicitor can explain why such a large proportion of staff work was required in a case where the solicitor had little involvement.

[11] I am also of the view that the Applicant notified the Respondent promptly about her concerns, and he cannot be surprised when she moved to have the bill assessed. I also agree that under the circumstances of the situation, payment of the bill cannot be interpreted to be acceptance of it."

Although the learned judge correctly applied the test for "special circumstances" and the result is undoubtedly correct, it is submitted that the judicial exercise was unnecessary, insofar as the former limitation periods (one month under [s.3\(b\)](#) and one year under [s.4](#)) of the [Ontario Solicitors Act](#) are effectively repealed and all assessments of lawyers' interim and/or final accounts rendered on or after January 1, 2004 are now subject to the general two-year limitation period under [s.4](#) of the [Limitations Act, 2002](#) and beyond, if special circumstances are proven.