

**REFERENCE:** Pierre Lamoureux v. Low Murchison Radnoff LLP, 2024 ONSC 5484  
**COURT FILE NUMBER:** CV-13-59701  
**DATE:** 2024/10/03

**SUPERIOR COURT OF JUSTICE  
OF ONTARIO**

**BETWEEN:** )  
 )  
 Pierre Lamoureux )  
 ) Ronald F. Caza and Albert Brunet, for the  
 – and – ) plaintiff  
 )  
 Low Murchison Radnoff LLP )  
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 )  
 ) Stephen Cavanagh, for the defendant  
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 )  
 ) **HEARD:** November 14, 15, 16, 17, 20, 21,  
 ) 22, 23 and 24, 2023; December 18, 19, 20,  
 ) 21, 2023; and April 16, 2024

**REASONS FOR JUDGMENT**  
**(Translation from original French reasons**  
**released on October 3, 2024)**

**JUSTICE A. KAUFMAN**

**Introduction**

- [1] Prior to 2000, Pierre Lamoureux was a partner at the law firm Seguin Landriault Lamoureux. Following a stroke suffered by Mr. Seguin and the announcement of Mr. Landriault’s retirement, the firm was dissolved. As a result, Mr. Lamoureux set out to find a new location to continue his successful career as a lawyer. He joined Low Murchison, which became Low Murchison Radnoff in 2012. In these reasons, the designation “LMR” will refer to both Low Murchison and Low Murchison Radnoff.
- [2] On November 21, 2000, the parties entered into a written agreement. This agreement referred to Mr. Lamoureux as an “independent solicitor,” stipulating that he would share the firm’s overhead while covering his personal expenses. Mr. Lamoureux describes this relationship as simply “glorified office sharing.” LMR, on the other hand, maintains that

Mr. Lamoureux was highly integrated into the firm and that, despite his financial independence, the agreement provided that he was deemed to be an “associate,” which will be discussed later.

- [3] The association between Mr. Lamoureux and LMR ended in 2011. This dispute concerns the consequences of the dissolution of this relationship.
- [4] Mr. Lamoureux is making two separate claims.
- [5] The first concerns wills and files prepared by Mr. Lamoureux for his clients while he was practising law at LMR. Mr. Lamoureux alleges that LMR failed to respect the independence of his practice by requiring that he obtain written directives from his clients to be authorized to take possession of their wills and files. He argues that LMR erected unjustified barriers to discourage him and ultimately take control of his practice.
- [6] The second claim in his statement of claim relates to amounts billed by Mr. Lamoureux to his clients, which LMR allegedly received without remitting them to him. Mr. Lamoureux states that these amounts, billed between 2008 and 2011, total approximately \$75,000. He further alleges that LMR refuses to reimburse his clients for various credits belonging to them or transfer sums held in trust that are owed to them.
- [7] Mr. Lamoureux is also claiming punitive, aggravated and mental distress damages arising from the alleged breach of his contract.
- [8] LMR, for its part, characterizes this action as a vendetta and argues that Mr. Lamoureux is seeking revenge for having been asked to leave the firm in 2011.
- [9] These reasons will be divided into two parts:
  - a) The first will address Mr. Lamoureux’s claim that LMR breached its contract by requiring him to obtain directives from his clients to remove his clients’ wills and files from LMR’s offices.
  - b) The second part will deal with Mr. Lamoureux’s financial claims.

**I. Violation of the term “independent practitioner”**

- [10] Mr. Lamoureux alleges that an explicit clause in his agreement with LMR referred to him as an “independent practitioner” and that this status had significant consequences. He maintains that his practice and that of LMR were separate, so that when their contractual relationship ended, he could keep his client files and wills and take them with him without interference from LMR.

**Background to the formation of the contract**

- [11] Gordon McCay, who was the managing partner of LMR in 2000, testified that he had had discussions with Stephen Latté, a lawyer who was practising with Mr. Lamoureux at

Séguin Landriault Lamoureux, with a view to having him join LMR. Mr. Latté subsequently introduced Mr. Lamoureux to the firm.

- [12] Mr. McCay testified that he had initial discussions with Mr. Lamoureux, who expressed an interest in joining the firm. At a meeting in November 2000, Mr. McCay explained how the firm operated. He indicated that LMR wanted Mr. Lamoureux to join the firm for one year, after which he would become a partner.
- [13] Mr. Lamoureux received a brochure from the firm, the previous year's financial statements and information on the firm's overhead.
- [14] Mr. Lamoureux testified that he had no negotiations or discussions prior to signing the contract. He stated that the contract had been presented to him and that he had signed it without disputing any of its terms.
- [15] Mr. McCay testified that there was no discussion about the meaning of "independent associate" or "independent practitioner."
- [16] The 2000 agreement provided that Mr. Lamoureux would be associated with LMR as an independent practitioner, with costs and financial benefits approximately equivalent to those applicable to the partners. Day-to-day management of the firm would be handled by a small management committee or managing partner, and all major decisions would be made by the partners.
- [17] The agreement included the following clauses:
- a. Mr. Lamoureux would be associated with LMR as an "independent practitioner." Despite the independence of his practice, he would practise under the name of LMR and would appear on the firm's letterhead. Mr. Lamoureux's accounting would be integrated into LMR's accounting system.
  - b. Mr. Lamoureux would be entitled to the income generated by his practice and would be solely responsible for his liabilities.
  - c. LMR would provide Mr. Lamoureux with an appropriate workspace, filing space and furniture for himself and his assistant. LMR would provide Mr. Lamoureux with computers for himself and his assistant.
  - d. Mr. Lamoureux would bring a will vault in which his wills were filed. He would be provided with storage space for his wills, active files and minute books. The cost of off-site storage of his files would be an expense of the firm.
  - e. His legal assistant would be placed on the firm's payroll and would be entitled to the same benefits as other LMR employees. He would also share another legal assistant with another LMR lawyer. The total cost of his assistant's salary, as well as employer contributions, taxes and benefits, would be billed back to him.

f. Mr. Lamoureux would have access to the firm's facilities and equipment on the same basis as other LMR employees.

g. The firm would rent Mr. Lamoureux's office in St-Isidore, Ontario, and pay the office phone charges, then bill them back to Mr. Lamoureux on a monthly basis.

h. Mr. Lamoureux would have signing authority on the firm's general and trust accounts. Mr. Lamoureux would comply with LMR's rules for those accounts.

i. Mr. Lamoureux would pay LMR an amount to cover his share of the firm's overhead. Mr. Lamoureux's share of overhead would be billed monthly and paid out of his practice income. Adjustments would be made at the end of the year.

j. Mr. Lamoureux would withdraw \$6,000 on the 15th and 30th of each month, provided the revenue derived from his practice was sufficient to cover his assistants' salaries, his share of overhead and his withdrawals.

k. Lastly, Mr. Lamoureux would contribute \$15,000 as his share of the firm's "float" in the firm's bank account to cover the firm's disbursements.

l. The agreement could be terminated by either party upon 60 days' notice, in which case any amounts owed by either party to the other would be payable on the date of termination.

[18] LMR partner Gary Boyd testified that the firm was interested in having Mr. Lamoureux join the firm for several reasons, including his contribution to overhead, his good reputation, his successful practice, the opportunities for derivative work, his bilingualism and his ability to fill a gap in LMR's practice. The firm also wanted him to mentor other members.

[19] Both parties agree that their arrangements worked well for the first five years. LMR partner Carol Cochrane testified that from 2000 to 2005, the collaboration went smoothly, noting Mr. Lamoureux's discipline, work ethic, busy practice and excellent billings, as well as his clients' appreciation.

[20] Mr. McCay suggested to Mr. Lamoureux that he become a partner, but he was not interested because of his age.

#### 2005 agreement

[21] After five years, Mr. Lamoureux and LMR signed a new agreement.

[22] Ms. Cochrane, then managing partner in 2005, presented the new agreement to Mr. Lamoureux after the partners had agreed to continue working with him subject to minor modifications.

- [23] Mr. Lamoureux testified that he had no discussions prior to signing this agreement either, stating that it was substantially similar to that of November 2000.
- [24] The 2005 agreement, signed on November 11, included the following new clauses:
- a) Mr. Lamoureux was deemed to be an “associate” of LMR as an independent practitioner.
  - b) Regular meetings were scheduled for all lawyers (partners, senior associates such as Mr. Lamoureux, and juniors) to ensure that decisions regarding the day-to-day management of the firm were brought to their attention.
  - c) Major decisions affecting his financial obligations to the firm would be made by the partners and senior associates.
  - d) Decisions affecting the responsibilities of the partnership would be made solely by the partners.
- [25] The 2005 agreement introduced the term “senior associate,” which was not present in the 2000 agreement. Mr. Boyd explained that a “senior associate” was anyone who was neither an employed lawyer nor a partner.

Mr. Lamoureux’s practice at LMR

- [26] Mr. Boyd described Mr. Lamoureux as a busy, hard-working and competent lawyer who did not enjoy administrative tasks and focused on his work. His clients seemed to appreciate him greatly, and he had a busy practice.
- [27] Mr. Lamoureux brought about 1,000 wills to LMR. At one point, his pre-2001 wills were incorporated into LMR’s will vaults. The new wills he prepared were also incorporated into these will vaults.
- [28] LMR provided all the infrastructure necessary for Mr. Lamoureux’s practice, including furniture, office space and equipment.
- [29] Upon his arrival at the firm, all of Mr. Lamoureux’s active files were integrated into the firm’s PCLaw computer practice management system.
- [30] Mr. Lamoureux confirmed that he had always used LMR letterhead. The 2005 agreement itself is written on the firm’s letterhead, and Mr. Lamoureux is listed as the third lawyer on a list of thirteen, with no indication of his independent status.
- [31] Mr. Lamoureux acknowledged that all his emails were sent through his LMR email account and that his phone number and voice mail were integrated into LMR’s phone system.
- [32] He used LMR’s general and trust accounts, complying with the firm’s rules regarding these accounts. His corporate minute books were stored with those of LMR.

- [33] All his files were opened via LMR's computer system, his invoices included LMR's HST number and his clients' payments were received in LMR's bank accounts. Invoices were printed on "Low Murchison LLP" letterhead and signed "Low, Murchison LLP Per: Pierre Lamoureux."
- [34] Mr. Boyd testified that the firm held regular meetings to discuss policies, changes and practices. Mr. Lamoureux attended occasionally until 2007, according to his own testimony, corroborated by Mr. Boyd and Mr. Cochrane.
- [35] Mr. Lamoureux brought his clients from his former firm and testified that new clients were referred to him by his former clients. He denied having obtained clients referred by LMR.
- [36] Although Mr. Lamoureux testified that he worked independently without the assistance of other lawyers, there is evidence that other LMR lawyers and students billed time on his files.
- [37] In his annual reports to the Law Society, Mr. Lamoureux declared himself as an "employee/associate in a law firm" rather than as an independent practitioner. He testified that he may not have completed these annual reports himself.
- [38] Mr. Boyd testified that Mr. Lamoureux was independent in the sense that his income belonged to him, but that he was nevertheless a member of the firm.
- [39] Mr. Lamoureux kept an office in St. Isidore. He went there once a week. His office in St-Isidore had no distinctive LMR sign.

End of the association

- [40] Mr. Boyd testified that, in early May 2011, all the partners had decided to stop practising with Mr. Lamoureux.
- [41] On May 9, 2011, Mr. Lamoureux was called to a meeting with Ms. Cochrane and Mr. Jeffcott, another LMR partner. He was given 60 days' notice to leave the firm.
- [42] LMR's reasons for ending its association with Mr. Lamoureux are not strictly relevant, and I do not intend to go into them in detail. Both parties acknowledge that they had the right to terminate their association by giving the other party 60 days' notice. Let's just say that there were disagreements between Mr. Lamoureux and others in the firm and that the LMR partners came to the conclusion that they wished to continue practising without him.
- [43] Mr. Lamoureux said he was "shocked and surprised" to be asked to leave the firm. He felt he should have been given a warning and an explanation. In an email sent to Ms. Cochrane the next day, he wrote that being told he was unwanted and unworthy was too much to bear, and that he would never get over it. Mr. Lamoureux asked that his departure date be postponed to December 2011 because his move required planning and organization.

- [44] On May 13, 2011, the three partners on the management committee jointly signed a letter accepting his request to postpone his departure until December 31, 2011. Attached to the letter was a summary of the Law Society of Upper Canada's practice management guidelines. The guidelines stated that clients were to be notified in writing of a lawyer's anticipated departure from a firm and were to be given three options: 1) that their file be transferred to the departing lawyer upon receipt of signed directives, 2) that their file remain with the firm and be transferred to another lawyer in the firm with the client's approval or (3) the file be transferred to another lawyer of their choice upon receipt of signed directives to that effect.
- [45] Mr. Boyd testified that this same procedure had been used when other "senior associates" had left the firm (John Peart and Bill Neville).
- [46] Mr. Lamoureux did not initially complain about having to obtain directives. On November 17, 2011, he disputed that this procedure should be followed for his pre-2001 wills or for his clients in St-Isidore. He argued that his office in St-Isidore did not have a Low Murchison sign and that these clients had been with him before he joined the firm. Mr. Lamoureux also contested certain requirements imposed on him regarding the payment of unbilled disbursements or accounts receivable before a file could be transferred.
- [47] In an email dated November 24, 2011, Mr. Boyd advised that Mr. Lamoureux could remove all his pre-2001 wills from the LMR will vault as these files were not LMR files. For all other wills, Mr. Boyd proposed that a simplified standard letter be drafted asking clients if they wanted their will to remain with LMR or go with Mr. Lamoureux. For files opened while Mr. Lamoureux was at LMR, directives should be obtained and clients given the choice.

Difficulties following Mr. Lamoureux's departure

- [48] Mr. Lamoureux joined the firm Charron Langlois after leaving LMR. Shelley Abraham, Mr. Boyd's assistant, was designated as the person responsible for receiving client directives and transmitting client files and wills. Judith Carrière, Mr. Lamoureux's assistant, was responsible for transmitting the directives and making arrangements to retrieve these documents. Both testified at trial that they had developed a good, friendly working relationship.
- [49] Difficulties arose as soon as Mr. Lamoureux left and persisted for many years.
- [50] Mr. Lamoureux had left hundreds of boxes of pre-LMR (pre-2001) files stored off-site at Securit. To obtain a file in storage, he had to go through LMR and pay a file retrieval fee.
- [51] LMR did not ask for directives to return these files to Mr. Lamoureux. LMR alleged that there were 474 boxes of pre-2001 files in storage, whereas Mr. Lamoureux believed there were about 200. LMR was paying \$165.42 per month to store these files and requested compensation for these storage costs. Mr. Lamoureux agreed to cover the cost of storage once he had unrestricted access to the files and provided that he would not be billed retroactively. This issue was finally resolved in 2014.

- [52] Mr. Lamoureux expressed concern that LMR was ignoring directives he submitted for many months.
- [53] Ms. Carrière testified that she prepared directives when Mr. Lamoureux met with a client and had them signed. Sometimes she sent them by email, and sometimes by mail with a self-addressed, postage-paid envelope. When she accumulated a certain number of directives, she contacted Ms. Abraham.
- [54] LMR did not charge a fee for the retrieval of a will kept at its offices. If a client file was to be retrieved off-site, Ms. Carrière would request a cheque from Charron Langlois's office in Rockland, arrange for a courier service to pick up the cheque, go to the LMR office to drop off the cheque and retrieve the file, then return to Mr. Lamoureux's office to drop off the file.
- [55] If LMR did not respond to a request for a file or will, Ms. Carrière made a note to follow up. If there was no response to the follow-up, Ms. Carrière would do a third follow-up. A chart was prepared listing the dates on which various documents were requested, the dates of subsequent requests (if any) and the dates on which requested documents were received.
- [56] On several occasions, Ms. Carrière was informed that the will requested could not be found.
- [57] One of these was the will of Viateur Larocque. Following Mr. Larocque's death, his family took legal action against Mr. Lamoureux and LMR. Two students were hired to search LMR's will vaults for Mr. Larocque's will.
- [58] Abigail Laframboise was one of those students, and she testified at trial that Mr. Larocque's will was not found. However, 80 wills prepared by Mr. Lamoureux were found, even though LMR had stated that these were not in its vaults. Ms. Laframboise testified that the wills were found in the right place or close to where they should have been filed.
- [59] Ms. Carrière also testified that on several occasions, LMR did not respond to Mr. Lamoureux's requests in a timely manner. In a letter dated November 10, 2014, Mr. Lamoureux's former lawyer listed 14 requests that were pending for three weeks to over seven months.
- [60] Ms. Abraham testified that on occasion, a will that should have been placed in LMR's will vault was placed in the client's file off-site, causing delays. She would confirm with Ms. Carrière whether the client file needed to be retrieved from off-site storage, as there was an associated cost. She testified that she occasionally received unsigned directives. She also testified that directives were sent to her, but the wills in question had already been sent to Mr. Lamoureux. She brought a binder containing many examples of directives received and provided the next day, and of requests received when the will had already been provided and sent. Ms. Carrière admitted that on 30 or 40 occasions, she had requested files or wills that had already been received.
- [61] Regarding the pre-2001 wills in LMR's will vaults, on at least two occasions LMR informed Mr. Lamoureux that the wills were not in its possession. However, clients were



able to retrieve them directly at LMR's office without having to provide any form of identification.

- [62] Mr. Lamoureux was exasperated by all these problems with obtaining wills and client files, as well as financial disputes with LMR. He accused Mr. Boyd of being a crook and a liar whose dishonesty knew no bounds. On March 13, 2012, Mr. Boyd complained to the Law Society that Mr. Lamoureux had committed professional misconduct in the way he had behaved toward him and other LMR colleagues. On September 26, 2013, the Law Society cautioned Mr. Lamoureux about the civility and appropriate tone expected of a lawyer.

### **Analysis**

- [63] Mr. Lamoureux bases his claim on a breach of contract. According to him, LMR violated the 2000 and 2005 agreements, which provided that he was an "independent practitioner." This status, he alleges, meant that he retained his own practice as well as control over his files.
- [64] In my view, LMR's right to seek directives before transferring files is not determined solely by its contract with Mr. Lamoureux. While the contractual relationship between Mr. Lamoureux and LMR is relevant, it is also important to consider the relationship between Mr. Lamoureux and his clients, the relationship between LMR and Mr. Lamoureux's clients and the regulatory framework governing the practice of law.
- [65] In view of these factors, the court finds that LMR had obligations to Mr. Lamoureux's clients and would have exposed itself to liability if it had not obtained directives authorizing the transfer of documents belonging to the clients.

### Relationship between Mr. Lamoureux and LMR

- [66] Mr. Lamoureux describes his relationship with LMR as "glorified office sharing," a description that greatly underestimates the nature of their relationship. In my opinion, Mr. Lamoureux's practice was highly integrated with that of the firm. The terms of the agreement and the relationship of the parties from 2001 to 2011 contradict Mr. Lamoureux's assertion that he operated in isolation within the LMR infrastructure.
- [67] When he joined the firm, all of Mr. Lamoureux's files were integrated into LMR's PCLaw document management system. All of his active files, and the files opened at LMR, were opened in LMR's computer system.
- [68] The 2005 agreement stated that he was "deemed to be an associate of Low, Murchison LLP as an independent practitioner." It provided that, despite the independence of his practice, he would be practising under the name of LMR and that his name would be included on LMR's letterhead and website. The agreement refers to him throughout as a "senior associate."
- [69] Mr. Lamoureux testified that he had always used LMR's letterhead and acknowledged that the letterhead did not mention anything about his independent status. Mr. Lamoureux was

the third lawyer listed on LMR's letterhead and was included on the firm's website. There was no indication to the general public that Mr. Lamoureux practised "in association" with or independently of LMR. Because Mr. Lamoureux's name was on LMR's letterhead, his actions could have affected the reputation of the firm as a whole, while the behaviour of other LMR lawyers would also have affected Mr. Lamoureux.

- [70] Mr. Lamoureux used the LMR filing system. His pre-2001 wills and all the wills he prepared while at LMR were incorporated with LMR's wills. His client files were assigned LMR file numbers and stored with all other LMR files.
- [71] His legal assistants were LMR employees and were subject to LMR's employment policies.
- [72] The firm provided all the necessary infrastructure for his practice, including furniture, office space and equipment.
- [73] Mr. Lamoureux had signing authority on LMR's general and trust accounts. He admitted that he had to comply with LMR's rules for these accounts. His invoices included LMR's HST number, and his clients' billings were received in LMR's bank accounts.
- [74] Mr. Lamoureux's practice was also subject to LMR's firm policies. Under the 2000 and 2005 agreements, a management committee or managing partner was responsible for the day-to-day management of the firm. The 2005 agreement specified that regular meetings would be held to ensure that decisions regarding the day-to-day management of the firm were brought to Mr. Lamoureux's attention. The 2005 agreement also provided that important decisions affecting Mr. Lamoureux's financial obligations to the firm would be made by the partners and "senior associates," like himself. Mr. Lamoureux had the right to participate in those decisions with the partners. Mr. Lamoureux testified that he had occasionally attended regular LMR meetings but stopped attending in 2007.
- [75] In his annual report to the Law Society, Mr. Lamoureux declared himself an "employee/associate" in a law firm. He testified that he may not have been the person who filled out the form. However, under By-Law 8 of the Law Society of Ontario, it is the lawyer's obligation to file a report each year.
- [76] Mr. Lamoureux emphasized that the term "independent practitioner" acknowledges that he practised independently and that his practice was separate from that of LMR. When we look at the agreement as a whole and the relationship of the parties, I interpret those terms as applying to Mr. Lamoureux's compensation structure. Mr. Lamoureux's income was not generated through employment or a partnership.
- [77] Mr. Lamoureux testified that he had his own practice prior to joining LMR, that he had generated his own clients and that none had been referred to him by LMR. While this is true, this occurs when partners or employees leave one firm to join another. Mr. Lamoureux testified that he worked independently at LMR without the assistance of other lawyers. This is contradicted by his claim in this proceeding regarding billing errors for work done by other lawyers on his files.

- [78] Mr. Lamoureux claims that the words *You are deemed to be an “associate” of Low Murchison LLP as an independent practitioner* acknowledge that Mr. Lamoureux was not an “associate” but simply “deemed” to be an “associate” for administrative purposes. I do not share that interpretation. In my assessment, this sentence means that, notwithstanding the financial arrangements between Mr. Lamoureux and LMR (under which he was entitled only to the income generated by his practice and was solely responsible for his liabilities), the firm considered him to be an “associate.”
- [79] Mr. Lamoureux argues that the ordinary meaning of the word “independent” means “not dependent, not subject to the control of others, autonomous, not affiliated with a larger control unit.”
- [80] In my view, this reinforces my conclusion that the term “independent practitioner” related to his compensation structure. Mr. Lamoureux was subject to LMR’s firm policies, his legal assistants were LMR employees, his clients paid LMR, his files and wills were integrated with LMR’s files and opened through LMR’s document management system. Apart from his compensation, which depended solely on his efforts, Mr. Lamoureux’s practice was no different from that of other lawyers at the firm. He practised at a firm and was subject to its rules and policies. I agree with LMR that Mr. Lamoureux was a member of the firm in the same capacity as any other lawyer.

Relationship between Mr. Lamoureux and his clients

- [81] It was widely acknowledged that Mr. Lamoureux was highly valued by his clients. There is no doubt that they were loyal to him. There is no evidence that any of them, when given the choice, chose to stay with LMR after Mr. Lamoureux left.
- [82] For his clients, however, Mr. Lamoureux was an LMR lawyer from 2001 to 2011. My conclusion is based on the following.
- [83] First, Mr. Lamoureux corresponded with his clients on LMR letterhead and through his LMR email address. Mr. Lamoureux’s clients would not have been aware of the agreement between him and LMR. If they had been questioned, they probably would have said “my lawyer is Pierre Lamoureux at the firm LMR.”
- [84] Exhibit 97 is an affidavit of Bruce Richard, one of Mr. Lamoureux’s clients. Mr. Richard states in Paragraph 3: “I was aware that Pierre Lamoureux had joined Low Murchison.”
- [85] Mr. Lamoureux billed his clients on a form bearing LMR letterhead signed “Low, Murchison LLP Per: Pierre Lamoureux.” Although neither party filed retainers as exhibits, it is reasonable to assume that the retainers would have been entered between the clients and LMR *per*: Pierre Lamoureux. It would be very unusual to retain the services of one entity and send payment to another.
- [86] Mr. Lamoureux reportedly met with his clients at LMR’s offices. There is no evidence that his office was separate or in any way distinct from the offices of other LMR lawyers.

[87] With respect to Mr. Lamoureux’s office in St-Isidore, there were no LMR signs. However, Mr. Lamoureux corresponded with his clients on LMR letterhead, and his clients would have received invoices from LMR and paid LMR.

[88] Based on the above, the court finds that Mr. Lamoureux’s clients, while loyal to him, would have described him as an LMR lawyer.

Relationship between LMR and Mr. Lamoureux’s clients

[89] In entering into the agreements in question with Mr. Lamoureux, LMR created obligations to Mr. Lamoureux’s clients and exposed itself to liability. This exposure to liability militates for the firm obtaining directives to authorize the transfer of property belonging to clients.

[90] By putting Mr. Lamoureux’s name on its letterhead and calling him an “associate,” LMR exposed itself to liability for Mr. Lamoureux’s actions.

[91] In *Wallbridge v. Brunning et al.*,<sup>1</sup> the plaintiffs sued Williams Litigation Lawyers, an Ottawa law firm, for defamatory statements allegedly made by a lawyer who was practising “in association” with that firm. The alleged defamatory statements were made on the firm’s letterhead or via the firm’s email. Unlike Mr. Lamoureux, the lawyer in question had hired her own legal assistant, had separate accounting and bookkeeping services and had her own separate records management system, to which the firm did not have access. In addition, she was identified on the firm’s letterhead as “practising in association, not in partnership” with the firm. The lawyer paid a monthly fee for the space and facilities she used.

[92] The Ontario Court of Appeal overturned the trial decision that had granted a summary judgment in favour of the firm and dismissed the action against it. Although the Court of Appeal found that the implications for persons practising in association must be established on the basis of complete evidence, it observed that by allowing the lawyer to use its letterhead, the firm had created a risk of publication of defamatory remarks, which could reasonably be considered to place the firm’s reputation behind the alleged defamation.<sup>2</sup> If the facts of the *Wallbridge* case could indicate that the lawyer was perceived to be a member of the firm, this perception is even more striking in the case of Mr. Lamoureux.

[93] In *Tiago v. Meisels*,<sup>3</sup> a client sued four independent practitioners who shared office space. The client alleged that one of the lawyers, Mr. Meisels, had been negligent in conducting a civil proceeding. The client alleged that by sharing an office, letterhead, telephone number and receptionist, the lawyers presented themselves as partners and were therefore jointly and severally liable for Mr. Meisels’ negligence. The defendants’ motion for summary judgment was dismissed, even though each of the lawyers kept separate books and accounts, had separate trust accounts and had reported to the Law Society that they

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<sup>1</sup> 2016 ONSC 7964.

<sup>2</sup> 2018 ONCA 363 (Ont C.A.), in s. 25–29.

<sup>3</sup> 2011 ONSC 5914.

were an independent practitioner. The court concluded that it had to approach the issue from the perspective of an ordinary client. The court found it reasonable for a client to conclude that these four lawyers collectively constituted a legal entity of a certain nature.

- [94] The court reaches the same conclusion here. An ordinary client would have perceived Mr. Lamoureux as a member of LMR, thereby exposing it to liability for his actions.
- [95] LMR was in fact sued by family members of a deceased client of Mr. Lamoureux. Mr. Lamoureux had prepared Viateur Larocque's will prior to joining LMR. He brought Mr. Larocque's will to LMR in 2001. After leaving LMR, one of Mr. Larocque's children notified Mr. Lamoureux that Mr. Larocque had passed away, and requested a copy of the will. Mr. Lamoureux did not have it and contacted LMR. LMR responded that it did not have it either. The Larocque family took legal action against Mr. Lamoureux and LMR. The action was defended by LAWPRO and ultimately settled.
- [96] In its submissions, LMR acknowledges that it would have been liable for the loss of Mr. Lamoureux's wills, just as it would normally be liable for the actions of other lawyers practising at that firm.
- [97] LMR employed Mr. Lamoureux's assistants, as well as other lawyers who worked on Mr. Lamoureux's cases. As a result, it owed a duty of confidentiality to Mr. Lamoureux's clients and would have exposed itself to liability if any of its employees had breached that duty.
- [98] As noted above, Mr. Lamoureux's clients had entered into a contract with LMR and paid LMR for Mr. Lamoureux's services.
- [99] On the basis of the foregoing, the court finds that by prominently displaying Mr. Lamoureux as one of its lawyers, providing him with infrastructure and administrative support and contracting with his clients, LMR took responsibility for the actions of Mr. Lamoureux and the staff who worked for him. This conclusion contradicts the notion that Mr. Lamoureux's practice was independent and distinct from that of LMR.

#### Regulatory context

- [100] As mentioned above, Mr. Lamoureux described himself as an "associate/employee" practising at a law firm in Ontario. Rule 1.1-1 of the *Rules of Professional Conduct* defines "associate" as "a licensee who practises law in a law firm through an employment or *other contractual relationship*" (emphasis added). Mr. Lamoureux's situation meets that definition because he was practising his profession in a law firm under a contractual relationship.
- [101] Neither party disputes that professionals have no proprietary rights to their clients. Professionals provide a personal service and establish a personal relationship with their clients, regardless of how the clients arrive at the firm or practice. The law recognizes that

clients should not be “handcuffed” to a company and that they have the freedom to choose their service providers.<sup>4</sup>

[102] The parties also acknowledge that the wills or files of clients belong to them, subject to a solicitor’s lien. Section 6(6) of the *Solicitors Act*<sup>5</sup> states:

6(6) Upon payment by the client or other person of what, if anything, appears to be due to the solicitor, or if nothing is found to be due to the solicitor, the solicitor, if required, shall deliver to the client or other person, or as the client or other person directs, all deeds, books, papers and writings in the solicitor’s possession, custody or power belonging to the client.

[103] Section 3.5-6 of the *Rules of Professional Conduct* states that “a lawyer shall account promptly for a client’s property that is in the lawyer’s custody and upon request shall deliver it to the order of the client or, if appropriate, at the conclusion of the retainer.”

[104] In law, the vast majority of documents contained in a lawyer’s file, including drafts, letters, pleadings and notes, belong to the client.<sup>6</sup>

### **Conclusion**

[105] Mr. Lamoureux is seeking \$250,000 in damages for the loss of his productivity and that of his assistants, related to the work done to obtain hundreds of directives from clients. This claim is based on the theory that, as an independent practitioner, his practice was distinct from that of LMR and he was able to take with him the client files and wills created while he was at LMR when he left the firm.

[106] Although Mr. Lamoureux was called an “independent practitioner” in his agreements with LMR, his integration within the firm was substantial. His practice was very closely integrated into that of LMR, using its infrastructure, computer and telecommunications systems and branding. For Mr. Lamoureux’s clients, Mr. Lamoureux was an LMR lawyer in his own right.

[107] This integration created obligations and potential liability for LMR toward Mr. Lamoureux’s clients. By putting his name on its letterhead and presenting him as an “associate,” LMR exposed itself to liability for Mr. Lamoureux’s actions. The firm therefore had a legitimate interest in ensuring that the transfer of files and wills was done properly.

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<sup>4</sup> *Goodman v. Newman*, [1986] O.J. No. 922, aff’d [1988] O.J. No. 298 (Ont. C.A.).

<sup>5</sup> RSO 1990, c. S.15.

<sup>6</sup> *Aggio v. Rosenberg*, 1981 Carswell Ont 407, [1981] O.J. No. 2229, 10 A.C.W.S. (2d) 462, 24 C.P.C. 7 (Ont. Master).

- [108] In addition, the regulatory framework recognizes that clients have the freedom to choose their lawyers and that their files belong to them. LMR had an obligation to ensure that clients' wishes were respected with regard to the transfer of their files. Obtaining directives was a reasonable way to fulfill this obligation.
- [109] Therefore, given Mr. Lamoureux's integration into LMR, the firm's obligations to clients and the regulatory framework, LMR was entitled to require directives before allowing Mr. Lamoureux to leave with wills or client files. This requirement was a prudent and appropriate measure to protect the interests of clients and the firm, rather than a breach of the agreement with Mr. Lamoureux.
- [110] Mr. Lamoureux's claim for damages for loss of productivity is dismissed.

## **II – Claim regarding accounting issues**

- [111] The plaintiff's statement of claim has been amended several times. The latest version was amended with leave of the court following a motion heard on December 15, 2022. LMR did not contest this motion to amend.
- [112] In Paragraph 1(a) of the statement of claim, the plaintiff claims:
- Payment of the amount of \$75,000, representing amounts billed by the plaintiff that remain unpaid, as well as costs deducted from amounts payable for which the plaintiff is not responsible.
- [113] Additional particulars are found in paragraphs 26 and 27. Mr. Lamoureux argues that he had billed various amounts when he was associated with LMR, but that these amounts, which total \$75,000, were never remitted to him. He argues that these amounts were billed between 2008 and 2011 and paid by his clients.
- [114] The parties refer to this claim as the "accounting claim." The court heard a considerable amount of evidence concerning the amounts Mr. Lamoureux claims to be owed. These claims relate to the following:
1. Referral fees – Mr. Lamoureux argues that, when he joined LMR, there was a policy stipulating that a lawyer who referred a case to a staff lawyer would be entitled to a percentage of the fees billed by the latter. This practice ended in 2007. Mr. Lamoureux is claiming \$28,874 in referral fees for cases referred by him prior to 2008 as well as for fees billed prior to 2008.
  2. Value for misallocated legal time – Mr. Lamoureux is claiming \$20,667 under this heading. He argues that some invoices included time billed by salaried lawyers or students that was inaccurate (e.g., an excessive amount for hours

actually worked). He requests that the amounts unduly billed by these individuals be attributed to him.

3. Bad debts – Mr. Lamoureux is claiming \$6,177 for doubtful accounts that were not adequately explained to him. These doubtful accounts were deducted from the amounts owed to him.
4. Unjustified expenses – Mr. Lamoureux is claiming \$7,290 for certain general expenses from which he received no benefit. For example, Mr. Lamoureux contributed to moving costs when Low Murchison merged with Radnoff Pearl, even though he was not going to work in that office.
5. The float – In 2009, LMR asked Mr. Lamoureux to increase his float from \$15,000 (stipulated in the contract) to \$20,000. Mr. Lamoureux is claiming \$750, which corresponds to the interest calculated at an annual rate of 5% for the years 2009 to 2011.

[115] LMR argues that none of these claims had been pleaded and that no evidence relating to these claims had been presented. In response, Mr. Lamoureux argues that a response to a request for particulars constitutes a pleading and, as such, all relevant facts have been pleaded. However, I am not convinced by this argument.

[116] The initial statement was issued on December 20, 2013.

[117] LMR filed its defence on August 8, 2014.

[118] On September 24, 2015, LMR served a request for particulars. LMR requested, in relation to Paragraph 1(a) of the statement, a breakdown of the \$50,000 that Mr. Lamoureux had billed and that had not been remitted to him.<sup>7</sup> LMR requested, among other things, the client numbers that had been billed, the invoice amounts, the amounts that LMR allegedly received and the dates.

[119] On October 4, 2018, Mr. Lamoureux served his response to the request for particulars (the “response”). In his response, Mr. Lamoureux clarified that he reserved the right to bring a motion to amend his statement to reflect certain developments that had occurred since September 2015. Mr. Lamoureux attached a table as an exhibit to his response, which contains substantially the details of the claims that were presented at trial.

[120] Mr. Lamoureux argues that if the court does not accept that the response constitutes a pleading, it could nevertheless allow the statement to be amended to include the allegations

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<sup>7</sup> The statement was subsequently amended to increase the amount of the claim to \$75,000.



made in the response. He argues that no harm would result from such an amendment, as LMR had been aware of these allegations since 2018.

### Analysis

- [121] Rule 25.06(1) of the *Rules of Civil Procedure*<sup>8</sup> states that a pleading must contain a concise statement of the material facts on which the claim or defence is based, without including the evidence.<sup>9</sup> It is fundamental to the judicial process that disputes be settled within the limits of pleadings. Determining liability and awarding damages against a defendant on a basis not invoked in the statement of claim constitutes an error of law.<sup>10</sup>
- [122] In his statement of claim, Mr. Lamoureux claims amounts that he billed and that were collected by LMR but not remitted to him. He also claims “fees” deducted from the amounts owed, for which he is not responsible, without providing details on the nature of these fees. The court finds that the claims made during the trial do not match the material facts set out in the statement of claim.
- [123] Referral fees, misallocated legal time, doubtful accounts, unjustified expenses and interest on the increased portion of working capital cannot be characterized as amounts billed by the plaintiff that remain unpaid. Mr. Lamoureux acknowledged that, with respect to credits owed to his clients, they do not belong to him.
- [124] In the alternative, Mr. Lamoureux seeks leave to amend his statement of claim, pointing out that the facts presented at trial had been known to LMR since October 4, 2018, the date on which his response to the request for particulars was served. Although Rule 26 of the *Rules of Civil Procedure* allows a pleading to be amended at any stage of the proceedings, this cannot be a means of circumventing the application of a limitation period by adding claims after it has expired. The expiry of a limitation period constitutes irreparable harm.<sup>11</sup>
- [125] The court is satisfied that when these new allegations were communicated to LMR on October 4, 2018, through a response to a request for particulars, the limitation period had already expired. The facts underlying these allegations occurred between 2008 and 2011. The court accepts LMR’s evidence that Mr. Lamoureux received pre-bills, financial statements and income statements in a timely manner. It was up to him to examine them and express his concerns.
- [126] Furthermore, Joanne Quinn, LMR’s accounting manager, testified that the firm stopped using PCLaw software following its merger with Radnoff Pearl, making it impossible to retrieve previous data. She said she had tried unsuccessfully to hire a consultant to extract

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<sup>8</sup> RRO 1990, Reg 194.

<sup>9</sup> *Ibid*, R. 25.06.

<sup>10</sup> *Rodaro v. Royal Bank of Canada*, 2002 CanLII 41834, in s. 59–61.

<sup>11</sup> *Klassen v. Beausoleil*, 2019 ONCA 407, 34 C.P.C. (8th) 180, in s. 26.

this information. The court finds that the time taken by the plaintiff to present these allegations is prejudicial as it compromises LMR's ability to respond to these claims.

- [127] It should be noted that, on December 15, 2022, the court granted LMR leave to amend its defence after granting the plaintiff leave to amend his statement of claim. LMR served its amended defence, in which it raised the defence of a limitation period. Mr. Lamoureux brought a preliminary motion in which he asked that the paragraph in the statement pleading this defence be deleted. The court accepted the plaintiff's argument, finding that the leave that had been granted to LMR was intended to allow it to respond to the changes in the statement of claim, not to raise new defences.
- [128] Given that the court did not allow LMR to amend its defence to invoke the limitation period, it is all the more appropriate to limit this action to claims that have been formally pleaded.
- [129] For the reasons set out above, the financial claims are dismissed.

**Punitive, aggravated and mental distress damages**

- [130] Punitive, aggravated and mental distress damages are based on a separate foundation, but must nevertheless arise from the breach of the contractual obligation that gave rise to the action. Since the plaintiff's action is dismissed, there is no basis for such damages.
- [131] That said, in the event of an error, the court wishes to make the following observations.
- [132] The plaintiff's theory is that LMR, believing Mr. Lamoureux was planning to retire, forced him out of their offices in order to appropriate his clientele. Mr. Lamoureux presents the following evidence to support this theory. Mr. Boyd asked questions about Mr. Lamoureux's retirement plans. Clients' files and wills are a business asset, and Mr. Lamoureux encountered many difficulties in retrieving these wills and files.
- [133] The most damning evidence against LMR is the fact that, in many cases, it had indicated to Mr. Lamoureux that the wills requested could not be found. However, following the death of Viateur Larocque and the lawsuit initiated by his family, two students were recruited to conduct a search of the will vault. They found 80 of those wills, either where they were supposed to be or close to where they were supposed to be filed. The evidence presented at trial establishes that no wills had been lost until Mr. Lamoureux left. It is difficult to explain what might have happened, and it is easy to understand why Mr. Lamoureux could perceive a conspiracy.
- [134] Nevertheless, the court is not convinced, on a balance of probabilities, that LMR attempted to hijack Mr. Lamoureux's practice. This conclusion is based on the following elements.
- [135] The people in charge of requesting and retrieving files and wills were two legal assistants, Ms. Carrière and Ms. Abraham. Both testified to a friendly relationship, which is corroborated by the exchanges between them, illustrating close collaboration.

- [136] In an email dated June 12, 2013, Ms. Abraham wrote to Ms. Carrière: “yup, we are a great team, good thing too cause I think it’s the only thing keeping us from losing our minds.” On November 21, 2013, Ms. Carrière said that she estimated she had 88% of the wills on her list and stated “we will finish this together, if it kills us!!!” In many cases, Ms. Abraham would send the will or power of attorney the next day or within days of the request.
- [137] Ms. Abraham was responsible for retrieving the required documents. She had no interest in delaying or withholding clients’ wills. There was no evidence presented at trial that Mr. Boyd or anyone at LMR instructed her not to provide the requested documents.
- [138] Mr. Lamoureux was responsible for some of the problems related to obtaining files and wills. Ms. Carrière acknowledged that unsigned directives had been sent and that there had been between 30 and 40 occasions when documents had been requested even though they were already in her possession. In addition, some wills were not properly filed in the will vault and were in client files stored off-site, making them more difficult to locate.
- [139] Although Mr. Lamoureux left LMR over 12 years ago, there was no evidence that LMR benefited financially from his clients’ wills or files. Mr. Boyd was not asked this question.
- [140] Many of the problems could have been avoided if Mr. Lamoureux had focused on obtaining directives during the six-month period following the May 9, 2011 meeting. Mr. Lamoureux testified that this was the busiest year of his career, but it would have been wise for him to acquire additional administrative support. This would have enabled him to locate, while he was still there, all pre-2001 wills that he could remove without directives. It would also have enabled him to obtain numerous directives before he left.
- [141] The relationship between the parties quickly deteriorated after Mr. Lamoureux left. Mr. Lamoureux described Mr. Boyd as a crook, a liar and an asshole, which led to a complaint to the Law Society. The court does not rule out the possibility that these personal attacks may have influenced the willingness to assist Mr. Lamoureux, and hence the speed with which LMR responded to his requests.
- [142] On the other hand, some of LMR’s actions added fuel to the fire. For example, there was no justification for requiring a cheque for \$30 every time a file was retrieved off-site. LMR could have easily opted for monthly billing.
- [143] Furthermore, there was no need to inform Mr. Lamoureux that LMR was going to compare the signatures on the directives with those of the clients in files. This approach called into question Mr. Lamoureux’s integrity, which had never been in doubt, and created unnecessary tension. Furthermore, it seems illogical to the court to require payment of unbilled disbursements before transferring files, since these amounts had already been deducted from the amounts Mr. Lamoureux had received.
- [144] In conclusion, the court does not accept Mr. Lamoureux’s conspiracy theory, finding that there is insufficient evidence to support the idea that LMR deliberately sought to take away his practice. Although there were tensions between the parties, largely as a result of Mr. Lamoureux’s personal accusations against Mr. Boyd, the court notes that many of the

difficulties encountered in recovering wills and files were attributable to Mr. Lamoureux himself. Gaps in communication, unsigned directives and a lack of appropriate administrative support complicated the situation considerably.

- [145] It is also clear that both parties could have acted more constructively to reduce the friction. LMR could have been more flexible in its procedures, notably by not demanding unjustified payments for each file retrieval and by not questioning Mr. Lamoureux's integrity through actions perceived as hostile.

**Decision**

- [146] For these reasons, this action is dismissed.

- [147] The parties are invited to reach agreement on the issue of costs. If they fail to reach an agreement and wish to make submissions regarding the amount of costs, the applicable scale, or whether another order would be more just, they may agree between themselves on a timetable for written submissions, or I may be consulted for guidance.

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Justice A. Kaufman

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**REFERENCE:** Pierre Lamoureux v. Low Murchison Radnoff LLP, 2024 ONSC 5484  
**COURT FILE NUMBER:** CV-13-59701  
**DATE:** 2024/10/03

**SUPERIOR COURT OF JUSTICE  
OF ONTARIO**

**BETWEEN:**

Pierre Lamoureux

– and –

Low Murchison Radnoff LLP

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**REASONS FOR JUDGMENT**

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Justice Kaufman

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