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Defendant's third-party claim against plaintiff's lawyer in breach of contract case dismissed

By **Stephen A. Thiele**

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Law360 Canada (October 28, 2026, 11:35 AM EDT) -- Third-party contribution and indemnity claims against lawyers is a hot topic of contention among the professional liability bar because of the existence of two lines of authority that are used by courts to determine whether such a claim is allowed to proceed or is dismissed on the basis that it discloses no reasonable cause of action.

In Ontario, the two lines of authority are rooted in *478649 Ontario Ltd. v. Corcoran*, [1994] O.J. No. 2103 on the one hand, and *Hengeveld v. Personal Insurance Co.,* 2019 ONCA 497 on the other.

In general, lawyers do not owe a duty of care to a non-client or the opposite party in a dispute or transaction. Lawyers act as agents for their clients. Accordingly, any act of negligence by a lawyer, subject to the client suing their lawyer, is the responsibility of the client. However, in cases where the lawyer has provided negligent advice to their client that results in a loss, the negligent advice can fall outside the scope of the agency relationship, and thus allows for a defendant sued by the client to bring a third-party contribution and indemnity claim against the client's lawyer under the provisions of the *Negligence Act*. This will occur in circumstances where the client does not sue their lawyer for negligence.

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Although these kinds of third-party claims can require complex legal analysis to assess whether the allegations against the lawyer involve issues of agency or advice, the recent decision in *CPCS Transcom Ltd. v. Lansdowne Office Inc.*, 2026 ONSC 5522 may provide some clarity or a more direct route to the assessment of the legitimacy of a third-party contribution and indemnity claim.

In this case, a client retained a lawyer to assist it in the negotiation of a commercial lease with a landlord. The client was seeking to lease space in the landlord's building. Eventually, an agreement was reached, and the lawyer's client became the landlord's tenant.

Under the terms of the lease, the tenant believed that it had leased only 7,500 square feet of space from the landlord.

However, the landlord demanded that the tenant pay more rent on the grounds that a measurement clause in the agreement permitted the landlord to recalculate the rentable area of the demised premises and recalculate the rent owing.

The landlord contended that the recalculated demised area was slightly more than 9,250 square feet.

Although the tenant disagreed with the landlord's interpretation of the lease and the recalculation, it decided to pay the increased rent demanded by the landlord under protest and to sue the landlord for an overpayment of rent. While the tenant's claim was based in breach of contract, it also raised some allegations that the landlord had been negligent in the design of the demised premises.

The tenant did not sue its lawyer, and thus, in the circumstances, the landlord commenced a third-party contribution and indemnity claim against the tenant's lawyer for any amount the landlord might be found to owe to the tenant in the main action.

In the third-party claim, the landlord alleged that the tenant's lawyer neglected to exercise reasonable care and skill in providing advice to his client about the lease measurement clause and that the tenant's lawyer was entirely responsible for any losses his client incurred.

While the tenant's lawyer sought to dismiss the third-party action on the grounds that it disclosed no reasonable cause of action, a motion judge found that the third-party claim was legally tenable.

Citing principles from *Corcoran* and *Hengeveld*, the motion judge concluded:

> The allegations that [the tenant's lawyer] provided negligent advice to the [tenant] is not attributable to the [tenant]. The alleged negligent advice would not be the fault of the [tenant]; it would be the fault of [the lawyer]. It can therefore ground a third party claim for contribution and indemnity under s. 5 of the *Negligence Act*.

The tenant's lawyer appealed, arguing that the third-party claim made no sense because his client's claim in the main action could only produce one of two following results.

If the tenant was successful in its contention that the lease only required it to pay rent for 7,500 square feet of space, he could not have been negligent.

In contrast, if the tenant's claim was dismissed and the landlord's measurement and calculation was correct, the landlord would suffer no loss for which the tenant's lawyer could be liable.

The Divisional Court agreed with the tenant's lawyer.

The Divisional Court found that the motion judge had failed to undertake an important step in his legal analysis. The legal analysis required him to ask whether the alleged negligence of the lawyer would be a basis for a finding of contribution and indemnity to the damages that could be awarded against the landlord. It simply could not.

The Divisional Court noted that while the tenant pleaded its action in both contract and negligence, the quality of the lawyer's advice would have caused his client no damage if the contractual meaning of the lease supported the tenant's interpretation of the lease.

Moreover, the Divisional Court said that the tenant's negligence claims against the landlord were not claims to which the lawyer could contribute.

The negligence claims were that the landlord failed to advise the tenant of design changes to the

premises and misrepresented the leased space to the tenant.

Meanwhile, the third-party claim did not allege that the tenant's lawyer advised his client on the impact of the design changes or the square footage of the demised space after those changes.

The Divisional Court expressed its key findings in the case as follows:

> In simple terms, if the [tenant] wins the main claim, then either its solicitors were not negligent or, if they were negligent, it did not cause the [tenant] any damage. If the [tenant] loses the main claim, then [the landlord] will have no liability to the [tenant] to which the [lawyer] could be called upon to contribute or indemnify [the landlord].

Accordingly, it was plain and obvious that the tenant's lawyer could never be liable under the third-party claim.

The key takeaway from this decision is that third-party contribution and indemnity claims against a plaintiff's lawyer are not necessarily easy to maintain. Although a defendant might claim that an alleged loss suffered by the plaintiff was wholly or partially caused by the negligent advice of their lawyer, courts will carefully review the pleadings to assess the potential outcomes of the main action to determine the tenability of the third-party contribution and indemnity claim. In cases where the plaintiff's success would show that its lawyer could not have been negligent or where the defendant's success would render the third-party claim moot, a third-party contribution and indemnity claim is completely unnecessary.

Overall, this case is comforting to the professional liability defence bar because it provides another route to the dismissal of non-client third-party claims against lawyers.

Stephen A. Thiele is the director of legal research at Gardiner Roberts LLP. He primarily works closely with dispute resolution lawyers, providing advice, value-added analysis and opinions on a wide range of litigation matters. He is the co-author of A Practical Guide to the Law of Defamation *(2024: LexisNexis).*

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