

**CITATION: JEFFREY DEROCHIE, BY HIS LITIGATION GUARDIAN CLAUDE  
LEBLANC et al v. POWELL-CLOW  
COURT FILE NO.: CV23-83  
DATE: 2025/09/17**

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Jeffrey DeRochie by his litigation guardian Claude Leblanc, Victor Bergeron,  
Carmen Bergeron, Lida Bergeron, Nadia Bergeron and Mya DeRochie, Plaintiffs

**AND:**

Shana Liane Powell-Clow, Defendant

**BEFORE:** The Honourable Justice Champagne

**COUNSEL:** Darcy Merkur, Counsel for the Plaintiffs  
Stephen Cavanagh, Counsel for the Defendant

**HEARD:** Considered in writing

**ENDORSEMENT**

- [1] Jeffrey DeRochie is a 48 year old man who is a party under disability. The parties bring this application for court approval of a settlement of his and of the other plaintiffs' claims arising from an incident which took place at the defendant's home on December 14, 2019.
  
- [2] On December 14, 2019, Mr. DeRochie was a guest in the defendant's home at 1210 Fatima Street, Cornwall Ontario. In the wee hours of the morning, at 3:00 am, Mr. DeRochie opened the basement door of the home, believing it to be the washroom. He fell down the stairs and lost consciousness. Paramedics were called and when they arrived they found Mr. DeRochie to be unresponsive to verbal stimuli. He was taken to the Cornwall Community Hospital where a CT scan revealed an open skull fracture and extensive intracranial hemorrhage. A toxicology screen was administered and showed that Mr. DeRochie had cocaine and alcohol in his blood stream. His alcohol readings were "high 16.4 mmol/L".
  
- [3] He was taken to the Ottawa Hospital Intensive Care Unit with severe life-threatening injuries. He underwent surgical decompression of his brain and evacuation of the hemorrhage when he arrived.
  
- [4] On January 3, 2020, Mr. DeRochie was medically assessed as entirely incapacitated both mentally and physically and he required a team of medical personnel to care for every aspect of his daily activities. He underwent a further craniotomy on January 6, 2020. On January 16, 2020, another brain hemorrhage was identified and he had a further craniotomy.

- [5] On April 24, 2020, Mr. DeRochie was transferred to Bruyere Continuing Care at St Vincent Hospital. Dr. Acharya reported that Mr. DeRochie had a tracheotomy in situ and although his eyes were open there was no evidence of purposeful tracking. Mr. DeRochie remained unresponsive. When he was discharged from Bruyere, he was noted to be non-verbal and requiring total care. He used a tilt wheelchair for mobility.
- [6] Mr. DeRochie requires a Percutaneous Endoscopic Gastrostomy (PEG) tube and condom catheter alternating with briefs due to incontinence and he requires a feeding tube. His wheelchair and other assistive devices are partially covered by the Ontario Assistive Devices Program. His medication is covered under the Trillium drug plan and his treatments have been funded primarily by OHIP. He receives physiotherapy 4 to 5 times per week.
- [7] On November 3, 2022, Mr. DeRochie was admitted to the Royal Ottawa Place which is a long term care home where he currently resides and where he receives 24 hour care. While his mother says she sees some improvement in her son, he is completely dependent for transfers, toileting and other needs and he rarely understands what is being said to him, nor is his communication understood. He continues to require a feeding tube. His medications and additional treatments are not covered by any insurance plan. A future care cost assessment recommended a monthly stipend of \$1,750 for additional personal support worker assistance and \$51,465.88 per year for rehabilitation and treatment. The total future care costs, assuming Mr. DeRochie lives just under 35 more years, is approximately \$1,811,540.33.
- [8] As of October 13, 2023, OHIP's subrogated claim totalled \$1,932,354.72 and continues to increase.
- [9] On December 7, 2023, his mother Carmen was appointed to be his Guardian of Property.
- [10] Prior to the incident, Mr. DeRochie lived in a triplex that he owned in Cornwall. He worked as a forklift operator earning \$17.50 per hour. His income from employment in 2018 was \$19,875.44.
- [11] He was diagnosed with MS in 2013 and he had a history of daily marijuana use and weekend binge drinking as well as the use of other substances.
- [12] Currently Mr. DeRochie receives \$1,116.54 in CPP disability benefits which covers the \$927.92 monthly fee for his placement at the Royal Ottawa Care home.
- [13] Counsel for the plaintiff engaged in discussions with a representative from OHIP to confirm that if the defendant paid her policy limits, OHIP would not seek to recover anything from their subrogated claim. OHIP agreed.
- [14] It is not disputed that Mr. DeRochie's injuries are catastrophic and are the result of the fall down the basement stairs. His claim against the plaintiff's alleges that the door to the

basement swung inward and there was no landing at the top of the stairs nor was there a handrail.

- [15] That being said, the defendants' position was that that Mr. DeRochie would bear a significant degree of contributory negligence in view of the toxicology reports. They filed a jury notice. The plaintiff's counsel conceded that a court could well find that the plaintiff would be found to be contributorily negligent.
- [16] The plaintiff's counsel negotiated a settlement with the defendant's counsel for the defendant's policy limits, plus a contribution to costs.
- [17] The proposed settlement is as follows:

|                                                                                                  |                |
|--------------------------------------------------------------------------------------------------|----------------|
| To Jeffrey DeRochie's Guardian of Property,<br>Carmen Bergeron, for the sole benefit of Jeffrey: | \$1,415,000.00 |
| To Carmen Bergeron:                                                                              | \$52,500.00    |
| To Victor Bergeron:                                                                              | \$15,000.00    |
| To Lida Bergeron:                                                                                | \$25,000.00    |
| To Nadia Bergeron:                                                                               | \$15,000.00    |
| To Mya DeRochie:                                                                                 | \$52,500.00    |
| To Thomson Rogers LLP for legal fees:                                                            | \$450,000.00   |
| To Thomson Rogers LLP for H.S.T. on legal fees:                                                  | \$58,500.00    |
| To Thomson Rogers LLP for Disbursements, including H.S.T.:                                       | \$16,500.00    |
| TOTAL:                                                                                           | \$2,100,000.00 |

- [18] Mr. DeRochie would receive a global sum of just over 1.4 million dollars pursuant to the proposed settlement. His mother who is his guardian for property opted for a structuring of the settlement. The structure, based on a total funding amount of \$1,300,000 would provide Mr. Derochie with monthly payments of \$7,170.38 per month. The monthly payments would serve to supplement any care expenses over and above what is covered by OHIP. In my view this resolution is more than reasonable given the risk on the issue of liability and taking into consideration that OHIP's subrogated claim on its own, was close to the defendant's policy limits.

#### ***Family Law Act Claims***

- [19] With respect to the *Family Law Act* claims, I accept the plaintiff's counsel's assertion that prior to the incident Mr. DeRochie had a close relationship with his parents, his daughter and with his half-sisters. There is no doubt that relationship has forever been altered for Carmen and Victor Bergeron who no longer have Mr. DeRochie's care, guidance and companionship; in fact, quite the opposite. In my view, the amount allocated for the Bergerons is appropriate. So too is the amount allocated for Mr. DeRochie's half-sisters and his daughters. All of them spoke to him frequently and visited with him during holidays and at other times. Mya, Mr. DeRochie's daughter, saw him on a regular basis every second weekend and he would take her to piano lessons and swimming classes and would participate in birthdays and holidays.

## ***Fees***

- [20] The plaintiff was originally represented by different counsel who had himself removed from the record without submitting an account. Mr. Derochie by the Public Guardian and Trustee entered into a contingency fee arrangement to retain the firm of Thomson Rogers to investigate and advance tort claims in relation to the plaintiff's fall and subsequent injuries.
- [21] The contingency fee established a solicitor client fee of 30% of the settlement amount plus disbursements and HST. When the PGT was replaced as guardian of property the new guardian agreed to the same retainer.
- [22] The plaintiff's counsel's evidence is that disbursements totalled \$17,997.44. Counsel reduced the disbursement amount to \$16,500.00 and the solicitor client fee 22.5%.
- [23] Counsel for the plaintiff submits that the proposed fee, is agreed to by the plaintiff's litigation guardian and while significant, is fair and reasonable in all of the circumstances. He indicates that he has been called to the bar for some 25 years and is certified as an expert in civil litigation. He argues that the risk the plaintiff would bear significant liability was high and thus counsel assumed a considerable amount of risk in taking this litigation on. He makes the point that he was able to negotiate a settlement for the defendants insurance limits and he was able to convince OHIP to reduce its subrogated claim to zero, leaving the plaintiff with a considerable sum he might not otherwise have received.
- [24] Counsel for the plaintiff refers me to three cases in support of his argument regarding his proposed fees: *Aywas v Kirwan*, 2010 ONSC 2278; *Umbach v Township of Wilmot*, 2014 ONSC 2995; and *Thompson v McNally*, 2024 ONSC 147.

## ***Law and Analysis***

- [25] Rule 7.08 of the *Rules of Civil Procedure* governs the approval of a Settlement on behalf of minors and persons under disability.
- [26] Rule 7.08 (1) sets out that no settlement of a claim made by or against a person under disability, whether or not a proceeding has been commenced in respect of the claim, is binding on the person without the approval of a judge.
- [27] Rule 7.08 (4) states that on a motion or application for the approval of a judge under this rule, the notice of motion or notice of application shall contain:
  - a. an affidavit of the litigation guardian setting out the material facts and the reasons supporting the proposed settlement and the position of the litigation guardian in respect of the settlement;
  - b. an affidavit of the lawyer acting for the litigation guardian setting out the lawyer's position in respect of the proposed settlement;

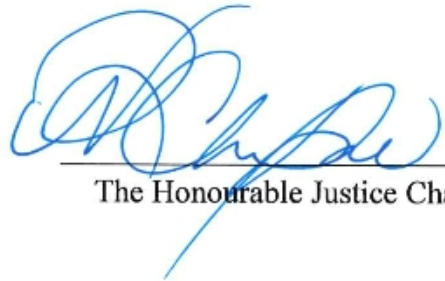
- c. where the person under disability is a minor who is over the age of sixteen years, the minor's consent in writing, unless the judge orders otherwise; and
- d. a copy of the proposed minutes of settlement.

- [28] The affidavit provided by counsel must identify the nature of the claim and provide an overview of same. It must summarize the settlement reached and whether it was reached with counsel for the opposed party, the opposed party directly or with an insurer. The Minutes of Settlement need to be included as an exhibit to counsel's affidavit.
- [29] In assessing the reasonableness of the proposed settlement, counsel's affidavit must contain an outline of the circumstances giving rise to the claim and must set out the liability issues. A discussion of the parties' respective positions on liability and damages should also be included.
- [30] If relevant, supportive document such as police reports, photos, etc., should be attached as exhibits.
- [31] If the parties agree to a discount from full recovery, this Court expects to be told why.
- [32] To properly consider a settlement of the amount of damage, the Court requires supporting medical information including prognosis.
- [33] Counsel's affidavit must also delineate the amount of disbursement fees, disbursements and subrogated claims from any global amount agreed to, together the Court must assess whether those costs are fair and reasonable for an account based on a contingency fee required to retain agent to be disclosed. Rule 7.09 requires monies payable to a party under disability to be paid to the accountant of the Superior Court Judge "unless a Judge orders otherwise". The discretion to order otherwise requires evidence in support to be provided.
- [34] In the matter before me, counsel provided a comprehensive affidavit which addressed all of the requirements for approval of the settlement. The basis for the plaintiff's claim is well laid out. Counsel's affidavit includes medical documentation in relation to the plaintiff's injuries as well as his prognosis, which is grim. The affidavit includes each party's perspective on liability and counsel was candid about the possibility the plaintiff would be found at least partially liable. On this point I find that the risk that the plaintiff would be found significantly contributorily negligent was high. The plaintiff's counsel was nonetheless able to settle with counsel for the insurer for the defendant's insurance limits. He was also able to negotiate with OHIP to reduce its subrogated claim to zero.
- [35] Counsel set out a thoughtful and comprehensive argument for the payment of contingency solicitor-client fees in the sum of 22.5 percent of the settlement. Most persuasive was the reasoning in para 7(f) in *Thompson v. McNally* in which Justice Leach said the following:

"In my view, the contemplated apportionment of indicated amounts to satisfaction of the plaintiff's obligation to pay legal fees is also entirely appropriate in the

circumstances. Indeed, while I think the circumstances of this particular case would have presented an example where an agreed 35 percent contingency fee was entirely justified by the risks inherently assumed by counsel when agreeing to take such a case on that basis, (given the extraordinary liability risks outlined above), and the excellent outcome achieved by plaintiff counsel notwithstanding the relatively weak figurative "hand" dealt to the plaintiff and her counsel by the underlying circumstances, plaintiff counsel very commendably has proactively volunteered and agreed to charge a far lower percentage of fee recovery, (i.e., 25 percent), with a sizeable portion of the resulting fee effectively to be paid by the defendant insurer. Plaintiff counsel's conduct in that regard, reflecting obvious concern for the long-term welfare of the plaintiff, (who seems destined to remain entirely dependent on her finite and net litigation recovery for survival over the balance of her life), is in keeping with the finest traditions of the bar."

- [36] In the matter before me, I find that the plaintiff was at significant risk for being found mostly liable for his injuries and his lawyer was able to negotiate an excellent financial resolution to the litigation at considerable risk to the firm. He then voluntarily reduced his contingency fee by 7.5 percent leaving the plaintiff with a structured settlement which would provide him with over \$7,000 per month.
- [37] In all of the circumstances, I am prepared to approve the proposed settlement as submitted.



The Honourable Justice Champagne

**Date:** September 17, 2025