

# **Sample Letter to Potential Client**

Prepared By: Constantine Pefanis

For:

Alberta Civil Trial Lawyers Association  
Virtual Meetings with Clients, Employees and Lawyers  
April 23, 2020

*Constantine Pefanis  
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# PEFANIS HORVATH

■ BARRISTERS AND SOLICITORS

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Our File: CJP

April 22, 2020

[Potential client name, address]

By Email: [email address]

Dear \_\_\_\_\_:

**Re: Videoconference Scheduled for \_\_\_\_\_ a.m./p.m. on [date]  
and Suggestions for How to Share Documents**

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Thank you for contacting me regarding your recent motor vehicle accident.

This letter is provided to facilitate our upcoming meeting by videoconference, and also to suggest some ways in which you can share documents with my firm if we are retained to act on your behalf.

## **1. Our Upcoming Videoconference**

I confirm that we have scheduled a meeting by videoconference to take place at \_\_\_\_\_ am./p.m. on \_\_\_\_\_. You will soon receive an email from me containing a link to access our meeting.

We will be using Zoom for our videoconference. If you have never used Zoom before, please watch this brief video on "Joining a Meeting" prior to our videoconference:

<https://youtu.be/hlkCmbvAHQQ>

We will review the circumstances of your motor vehicle accident during our videoconference. I will also explain the process of advancing a civil claim and will address any questions you may have. Our meeting will last somewhere between 45 and 90 minutes depending on the complexity

of your claim. I will take notes during our meeting and, with your consent, may also record parts of our videoconference.

If you wish to retain my firm and we are able to take you on as a client, I will ask you to sign various Release forms as well as a Contingency Fee Agreement so that my firm can begin working for you. **I will need to see you sign the Release forms and the Contingency Fee Agreement during our videoconference.** This is because there are rules concerning the validity of these forms with which I must comply. Also keep in mind that the Release forms are used to obtain your medical and other confidential information. It is important that I observe that you are the one actually signing these forms, so that the integrity of your consent is maintained.

The forms are found over the next few pages of this letter. Here are your instructions:

1. Please print the forms shown in this table, noting the number of copies you will need (see 3<sup>rd</sup> column). Please read the forms.

Page where form is found	Form	How many do I print?
5	Consent To Release Information	6
6	Alberta Health Services – Consent to Disclose Health Information, <i>Health Information Act</i>	2
7	Consent to the Disclosure of Individually Identifying Health Information	2
8-10	Contingency Fee Agreement	1

2. Do not sign the forms. Keep the **unsigned** forms nearby for our meeting.
3. At some point during our videoconference we will review the forms, and I will then ask you to sign all of them. Once they are signed, I will ask you to hold them up to the videoconference camera so I can see that the signatures are complete.
4. After they are signed, **please email or fax me a single copy of each signed form.** There are some suggestions on how you can send me these electronic copies on the next page of this letter.
5. Then, **please mail all of the originals to my office.** Alternately, I can send a courier to you in order to pick these up once you put them in an envelope addressed to my firm. My address is:

- Pefanis Horvath, 1310 – 11<sup>th</sup> Street SW, Calgary, AB, T2R 1G6.

Please have the following identification available during our videoconference:

- A valid Alberta driver's license, OR:
- Your passport.

Your driver's license or passport is required for client verification purposes. If you do not have either one, please contact me about this prior to our videoconference.

Finally, please have your social insurance number and your Alberta Health number available for our videoconference.

## **2. How Can I Share Documents with Pefanis Horvath?**

If we are able to act on your behalf and you decide to retain our firm, we will occasionally need to collect documents from you that relate to your claim. These include things like doctors' notes and expense receipts.

You have a couple of options on how to deliver these documents to us.

The first option is for you to provide us with the actual documents. You can physically drop these off at our office, or mail them to us, in which case I would ask that you keep photocopies for yourself.

The second, and preferred, option is for you to send us these documents electronically. This means:

- (a) faxing them to us at (403) 444-5879,
- (b) scanning the documents and using your computer to email us the scanned copies, or
- (c) using an app on your smartphone to take .pdf images of the documents and emailing these to us.

There are several smartphone apps that allow you to take and email .pdf images of your documents. Two that you might consider using are:

- Adobe Scan (by Adobe, requires sign-in), tutorial video: <https://youtu.be/MCyhOkBpELc>
- Office Lens (by Microsoft, no sign-in required), tutorial videos: <https://youtu.be/Z0iZ8l4b3k8>, or <https://youtu.be/6HC472rdSAc>

Please let me know if you have any questions or concerns. Otherwise, I will see you at our upcoming videoconference. I look forward to our meeting.

Yours truly,

**PEFANIS HORVATH**

**CONSTANTINE J. PEFANIS**

CJP/nlc  
Encls.

/...forms on following pages.

## CONSENT TO RELEASE INFORMATION

From: \_\_\_\_\_

D.O.B.: \_\_\_\_\_

A.H.C.: \_\_\_\_\_

S.I.N.: \_\_\_\_\_

**Date from which this Consent is effective: April 22, 2020**

To Whom It May Concern:

**RE: Release of Information**

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This is my authorization to release information you may have in your possession that relates to me, including:

1. Health records including but not limited to medical charts, notes, diagnostic imaging, consultation reports, psychological and psychiatric records;
2. tax information, income information, employment insurance information, information on disability insurance or other benefits received or for which I am eligible, and the contents of any files that relate to me;
3. the contents of my file(s) with the Workers' Compensation Board of Alberta;
4. any other information requested by Pefanis Horvath, Barristers and Solicitors, in the attached covering letter.

PEFANIS HORVATH, Barristers and Solicitors, 1310 – 11<sup>th</sup> Street SW, Calgary, Alberta, T2R 1G6, are acting on my behalf. Please provide Pefanis Horvath with the information they are requesting. This information is being requested for the purpose of litigation.

I understand why I have been asked to disclose this information and am aware of the risks or benefits of consenting, or refusing to consent, to disclose this information.

This Consent is effective as of the date written above. I understand that I may revoke this Consent at any time.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Witness

The patient/client or his/her authorized representative must complete this form before Alberta Health Services (AHS) will disclose the patient's/client's health information to someone else (unless Alberta's *Health Information Act* authorizes disclosure without consent).

<b>Section A: Patient/Client Information</b>			
Patient/Client Name			
Date of Birth (yyyy-Mon-dd)		Personal Health Number	
<b>Section B: What health information do you want disclosed?</b>			
Please provide details about the health information you want disclosed, such as the name of the AHS location/facility that provided the health service and the time period of the records.			
<b>Section C: What individual/organization is the patient's/client's health information being disclosed to?</b>			
Name of Individual/Organization			Phone
Address	City/Town	Province	Postal Code
<b>Section D: What is the purpose for disclosure?</b>			
Please provide the reason why you want to disclose the health information ( <i>required</i> ).			
<b>Section E: Authorized Representative</b> ( <i>required when asking for health information on behalf of another person</i> )			
If you are signing on behalf of the patient/client named in section A, please choose one of the options below and provide a copy of supporting documents.			
I, _____, am <i>(insert representative name)</i>			
<input type="checkbox"/> the <b>parent</b> or <b>legally appointed guardian</b> of the patient/client who is under 18 years of age and who is not a mature minor in relation to their health information. <input type="checkbox"/> the <b>guardian</b> or <b>trustee</b> appointed for the adult patient/client under the <i>Adult Guardianship and Trusteeship Act</i> exercising my powers or duties as their guardian or trustee. <input type="checkbox"/> the patient/client's <b>agent</b> named in an activated Personal Directive under the <i>Personal Directives Act</i> exercising my authority set out in the Personal Directive. <input type="checkbox"/> the <b>personal representative</b> of a deceased patient/client appointed by the patient/client's will or by the Court, administering the patient/client's estate. <input type="checkbox"/> the patient's <b>named attorney</b> in a Power of Attorney currently in effect exercising my powers and duties conferred by the Power of Attorney. <input type="checkbox"/> the patient/client's <b>nearest relative</b> selected in accordance with the <i>Mental Health Act</i> carrying out my obligations as the nearest relative. <input type="checkbox"/> the patient/client's <b>specific decision maker, supportive decision maker, or co-decision maker</b> , authorized in accordance with the <i>Adult Guardianship and Trusteeship Act</i> carrying out the related duties. <input type="checkbox"/> a <b>person with written authorization</b> from the patient/client to act on their behalf.			
<b>Section F: Consent for Disclosure</b>			
I authorize Alberta Health Services to disclose the patient/client's health information described above to the individual or organization(s) identified above. I understand why I have been asked to disclose my health information and I am aware of the risks and benefits of consenting or refusing to consent. I understand I may revoke this consent in writing at any time.			
Date consent is effective (yyyy-Mon-dd)		Expiry date (yyyy-Mon-dd)( <i>valid for 2 years if no date provided</i> )	
Name of person giving consent		Phone	Email
Signature		Date (yyyy-Mon-dd)	
Information on this form and the supporting documentation are collected under the authorization of sections 20 - 22 of the <i>Health Information Act</i> for the purpose of responding to your request and will be filed on the patient/client record. If you have questions about the collection and use of any information on this form, contact the Disclosure Help Line at 1.855.312.2265.			

Statement of Benefits Paid
PO Box 1360 Station Main
Edmonton AB T5J 2N3

Empty rectangular box

Law Firm/Insurance Company Unique Lifetime Identifier

This consent is obtained in accordance with section 22(6.1) of the Alberta Health Care Insurance Act and section 34 of the Health Information Act.

- Please Note: Alberta Health will not accept incomplete consent forms. A cheque in the amount of \$75 plus 5% GST = \$78.75, made payable to the Government of Alberta, must be attached to each request for a Statement of Benefits Paid.

Authorization

I hereby authorize the Minister and the Department of Alberta Health to disclose individually identifying health information in the form of a Statement of Benefits Paid, including:

- date of service, types(s) of service, name(s) of practitioner(s), amount(s) paid

for (full name of client - please print)

address (suite, street address), (city), (province), (Postal Code)

personal health number (PHN), and date of birth (day), (month), (year)

for the period (day) day of (month) (year) to the (day) day of (month) (year)

(name of law firm/insurance company)

(address of law firm/insurance company)

Purpose for disclosure (e.g., litigation, administer estate, etc.):

(Purpose/Reason)

This consent is effective on the (day) day of (month), 20 (year) and may be revoked by me in writing any time.

Signatures

I understand why I have been asked to disclose this information. I am aware of the risks and benefits of consenting or refusing to consent to the disclosure and have elected to do so anyway.

Signature of client (18 yrs of age or over) or authorized representative (If client under 18 yrs of age or wholly dependent on the authorized representative by reason of mental or physical infirmity.) Date

Signature of witness Date

Print name of person signing above (Client or authorized representative)

Name of witness (please print)

If signed by an authorized representative, describe authority (e.g., parent/legal guardian, trustee, etc. Proof may be required.)



[Insert your Contingency Fee Agreement here]

NOT TO BE RELIED UPON AS LEGAL ADVICE  
EXAMPLE ONLY

## Some things to consider:

### 1. Can a Contingency Fee Agreement be signed electronically?

Alberta Rules of Court 10.7 and 10.8 deal with contingency fee agreement (“CFA”) requirements. Among other things, the CFA must be “in writing,” and “be signed by the lawyer and the lawyer’s client.” Can this be done electronically?

See the *Electronic Transactions Act*, SA 2001, c. E-5.5, link:

[https://www.qp.alberta.ca/570.cfm?frm\\_isbn=9780779814282&search\\_by=link](https://www.qp.alberta.ca/570.cfm?frm_isbn=9780779814282&search_by=link)

Some of the relevant sections include:

#### **Interpretation**

**1(1)** In this Act,

- (a) “electronic” includes created, recorded, transmitted or stored in digital form or in any other intangible form by electronic, magnetic or optical means or by any other means that have similar capabilities for creation, recording, transmission or storage;

#### **Preservation of other laws re information or records in electronic form**

**2(1)** This Act does not limit the operation of any enactment or other law that

- (a) expressly authorizes, requires, prohibits or regulates the use of information or records in electronic form, or
- (b) requires information or a record to be posted or displayed in a specified manner or to be transmitted by a specified method.

**(2)** For the purposes of subsection (1), a reference to “in writing” or “signature” or other similar words or expressions does not by itself prohibit the use of information or records in electronic form.

#### **Legal requirement that information or record be in writing**

**11** A legal requirement that information or a record be in writing is satisfied if the information or record is

- (a) in electronic form, and
- (b) accessible so as to be usable for subsequent reference.

The *Electronic Transactions Act* contains some exceptions (s.4, 6 and 7). I do not believe any of these would apply to CFAs, but would caution anyone to conduct their own review as this particular point has not been confirmed by a court or taxation officer as far as I am aware. My own review of the *Act* and its underlying regulations leads me to believe that the *Act* applies to CFAs, in which case a signature transmitted by

electronic means fits the requirement, under rule 10.7, that a CFA be “in writing” and “signed by the lawyer and the lawyer’s client.”

**2. How do you swear an Affidavit of Execution attesting that you saw the client sign the CFA, so you are compliant with Rule 10.7(3)?**

Your Affidavit of Execution should be amended to show that you witnessed the signing through videoconference. A sample for this sort of Affidavit of Execution can be found in the Ministerial Order dated April 2, 2020, which can be accessed through the LSA’s webpage here: <https://www.lawsociety.ab.ca/guidance-for-video-conference-witnessing-and-commissioning-of-documents-submitted-to-land-titles-for-registration/>

Sample wording shown in Ministerial Order No. SA:008/2020, concerning the attestation of *Land Titles Act* documents:

1. I, \_\_\_\_\_, being a lawyer in and for the Province of Alberta:
  - a. witnessed the signature of \_\_\_\_\_ named in the within instrument, in a single session during which I was able at all times to see and hear the person signing the instrument by two-way videoconferencing;
  - b. saw \_\_\_\_\_, who, on the basis of the identification shown to me, I believe to be the person named in the within (or annexed) instrument, duly sign and execute the instrument; and
  - c. have complied with the requirements established by the Law Society of Alberta with respect to this type of witnessing in effect at the date of this Affidavit;
2. The instrument was signed at \_\_\_\_\_, in the Province of Alberta, and I am the subscribing witness thereto;
3. I believe the person whose signature I witnessed is at least eighteen (18) years of age.
4. (if being sworn by two-way videoconferencing) That I am executing this document separate and apart from any other person.

The wording shown above is drawn from a Ministerial Order that applies to Land Titles Act documents, rather than CFAs. Paragraph 1(c) makes reference to requirements established by the LSA regarding “this type” of witnessing. I interpret “this type” of witnessing to mean witnessing of the relevant Land Titles Act documents.

As of this writing, I am unaware of any specific Law Society of Alberta requirements for the witnessing of documents, such as CFAs, that are *not* Land Titles Act documents. If

correct, then paragraph 1(c) should not be included when adapting this sample wording for the Affidavit of Execution that relates to your CFA. Notwithstanding this, a best practice would be that you follow the same guidelines that the LSA has set out for Land Titles documents, found here: <https://www.lawsociety.ab.ca/guidance-for-video-conference-witnessing-and-commissioning-of-documents-submitted-to-land-titles-for-registration/>

### 3. How do you serve the CFA within 10 days, so you are compliant with Rule 10.7(4)?

Part 11 of the Alberta Rules of Court deals with service of documents.

Rules 11.3, 11.20 and 11.21 of the *Alberta Rules of Court*:

#### **Agreement between parties**

**11.3(1)** If, in a contract that is the subject of an action, the parties agree on

- (a) a place for service,
- (b) a mode of service, or
- (c) a person on whom service may be effected,

service of a document may be made in accordance with the agreement, and service is effected when so made.

#### **Service of documents, other than commencement documents, in Alberta**

**11.20** Unless the Court otherwise orders or these rules or an enactment otherwise provides, every document, other than a commencement document, that is to be served in Alberta may only be served by

- (a) a method of service described in Division 2 [Service of Commencement Documents in Alberta] for service of a commencement document,
- (b) a method of service described in rule 11.21 [Service by an electronic method],
- (c) recorded mail under rule 11.22 [Recorded mail service], or (d) a method of service agreed to under rule 11.3 [Agreement between parties].

#### **Service by electronic method**

**11.21(1)** A document, other than a commencement document, may be served by electronic method on a person who has specifically provided an address to which information or data in respect of an action may be transmitted, if the document is sent to the person at the specified address, and

- (a) the electronic agent receiving the document at that address receives the document in a form that is usable for subsequent reference, and

(b) the sending electronic agent obtains or receives a confirmation that the transmission to the address of the person to be served was successfully completed.

(2) Service is effected under subrule (1) when the sending electronic agent obtains or receives confirmation of the successfully completed transmission.

(3) In this rule, “electronic” and “electronic agent” have the same meanings as they have in the Electronic Transactions Act.

I can see no reason why CFAs should be exempt from Rules 11.3, 11.20 or 11.21. Therefore, it should be possible to serve the CFA upon the client:

- Through the ordinary means of leaving a copy of the CFA with the client. If you choose this option, note that Ministerial Order M.O. 27, 2020, suspends until June 1, 2020, the time within which any step must be taken in any proceeding subject to the discretion of the court (or other decision maker).
- Through electronic means under Rule 11.21. Note the requirement for some sort of confirmation that the electronic document has been received.
- Through agreement between the parties, under Rule 11.3. I suggest that this can be accomplished with the insertion of a paragraph within the CFA itself that reads something like:

*The Solicitor and the Client agree that this CFA can be signed in counterparts and by electronic means, and that service of the completed CFA can be effected upon the Client if it is transmitted in .pdf format to the Client's current email address of [insert client email address here].*

Also, note the comments concerning CFAs starting at paragraph 108 of **Niam v Silverberg, 2015 ABQB 682 (CanLII)**, link: <http://canlii.ca/t/glt8l>. Brooker, J. provides a comprehensive review on the rules relevant to enforceability of CFAs.