



March 15, 2021

Darren Blois, Chair, Ad Hoc Committee on Contingent Fee Agreements  
& Marc Richard, Q.C., Executive Director  
LAW SOCIETY OF NEW BRUNSWICK  
68 Avonlea Court  
Fredericton, New Brunswick  
CANADA E3C 1N8

RE: Atlantic Provinces Trial Lawyers Association submission regarding  
Changes to Regulation of Contingent Fee Agreements in New Brunswick

Dear Mr. Richard & Mr. Blois:

Thank you for the opportunity to submit comments regarding the proposed Changes to Regulation of Contingent Fee Agreements in New Brunswick. The Atlantic Provinces Trial Lawyers Association represents plaintiff-oriented lawyers in all four provincial jurisdictions, with a healthy membership in New Brunswick. As such, it is our Members who will be most affected by the Law Society's proposals. They are the lawyers who represent clients called to engage in contingent fee legal services.

The primary purpose in creating a standard Contingency Fee Agreement is to ensure that the public interest is met. In most cases, the purpose is to ensure that injured and vulnerable persons have the representation of experienced and informed counsel, and access to justice through a chosen advocate. The vast majority of clients could not afford the outlay of retainers and hourly fees associated with the prosecution of their injury claims. As such a Contingency Fee Agreement gives these individuals the ability to retain counsel and have their cases settled by agreement or through the Courts. Without payment determined by a Contingency Fee Agreement, they would not otherwise be able to access justice.

A second purpose of a Contingency Fee Agreement is to ensure that clients are charged a fee that is reasonable for the work done. A third purpose is to ensure that the lawyer doing the work is able to charge a fee that reasonably compensates them for their time, risk and efforts.

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To find one agreement that does all of that is a challenge, and as such – Contingency Fee Agreements that are imposed on lawyers and clients need flexibility. While we agree that Contingency Fee Agreements are necessary in the circumstances, a one-fee-fits-all approach may not be reasonable or workable. Thus, the existing option of retainer without a Contingency Fee Agreement.

Plaintiff lawyers in New Brunswick are confronted by two things as they decide to represent a client with an injury or disability claim; one is that the cap associated with the standard Contingency Fee Agreement is unusually low, and the second is that this jurisdiction has some of the lowest damage awards in injury cases in Canada.

The Law Society has proposed a number of changes. APTLA provides our comments in light of the comments above. The recommendations now advanced by the Committee are as follows:

**1. *Increase, but do not eliminate caps on fees.- max 33% and 38% for appeal***

APTLA recognises that the proposed change reflects an increase in percentage from 25% to 33%, and in that respect – it is a positive step towards access to legal representation for the injured and properly compensating plaintiff lawyers for their work on these types of files; and aligns generally with the practice in the other Atlantic Provinces.

**While certain cases and circumstances merit higher fees, APTLA can support a 33% standard Contingency Fee. Those files with legal work felt to exceed 33% of a damage award can opt for a formal review.**

With regard to agreements for Appeals, APTLA believes that the matter of a Contingency Fee Agreement or setting percentage amount for appeals is pre-mature if entered into at the beginning stage of a file. Appeals happen after an enormous amount of legal work, and they themselves take hours of preparation, document creation and appearances. Counsel may not want to proceed with an appeal at all, despite the wishes of the client. Setting a fee amount in advance would seem to negate the ability to decline to continue representation at the appeal. Further, counsel may make an assessment of the time and effort needed to bring the case to appeal and not feel that the additional set percentage reasonably represents its value.

**It is APTLA's position that fees for appeals after an unsuccessful or less than fulfilling outcome at Trial should not be set in advance. Such fees should be set at the time the appeal is undertaken and determined by agreement between the client and their counsel.**

**2. *Maintain the existing ban on CFA's in family and criminal cases***

APTLA takes no position on this.

**3. *More transparent and flexible options for how to deal with disbursements.***

APTLA notes the financial strain heavy disbursements can cause a small firm. It is our view that plaintiff lawyers must be able to bill for disbursements as needed, and potentially as they occur, as the burden of financing these disbursements can be detrimental to the operational finances of the firm.

**APTLA supports the proposals of the Ad Hoc Committee which include that plaintiff lawyers are able to invoice the client, as and when needed, for disbursements.**

**4. *More flexible options for how to deal with interest on disbursements.***

APTLA supports the proposals of the Ad Hoc Committee.

**5. *Reviewing Officers to be appointed by Council.***

APTLA supports the proposals of the Ad Hoc Committee.

**6. *Changes to Reviewing Officer Procedure.***

APTLA supports the proposals of the Ad Hoc Committee.

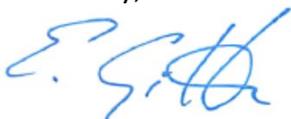
**7. *“Know Your Rights” Document***

APTLA encourages such a document be created and provided to all clients. We know that they are in a vulnerable position, as they are dealing with their injuries and the daunting prospect of entering the legal system for recovery of their losses. It is important that clients know their rights, and what is captured in the Contingency Fee Agreement and what is not. This will protect them from any sort of double-billing or misunderstanding with their lawyers as to how and what they will be billed.

**APTLA supports the inclusion of a “Know Your Rights” document with every Contingency Fee Agreement file.**

Thank you for contacting APTLA and seeking our input on this matter.

Sincerely,



Ernest L. Gittens  
APTLA President