

CONTINGENCY FEE RETAINER AGREEMENT

Section 1(1)(a) of Reg 195/04 under the Solicitors Act, RSO 1990 c.S. 15 requires the CFA to be entitled "Contingency Fee Retainer Agreement"

This agreement explains the services that we will provide to you, how you will be charged for them, and our responsibilities to each other. Please read this agreement carefully. If you have questions, please ask us before signing.

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Legal Services

This Claim Only

This agreement confirms that you have retained our services on a contingency fee basis to advance a potential claim (the "Claim") for damages you have sustained as a result of _____ that occurred on the following date: _____, due to the wrong doing of _____ or any other person who may be liable (the "Defendant").

This agreement does not cover services for any other matter.

OPTIONAL

This retainer is a tort-only retainer in which we are retained to recover damages for you from any at fault party. This retainer does not include any potentially related claims such as accident benefits from your insurer, long term disability, CPP disability claims, and social security claims.

Section 2(2) of Reg 195/04 requires that the agreement include the "basic type and nature of the matter in respect of which the solicitor is providing services to the client".

Who We Represent

In certain circumstances, family members and other individuals may be entitled to compensation in relation to the Claim. We represent only the individuals that we have agreed to represent and who have signed this agreement.

Potential Conflicts

If you have asked us to act for more than one person, this is a joint retainer. In that case, we will share information between everyone we represent. Any information received from any of you will be shared with the rest.

In the case of a joint retainer, you have advised that there is no conflict of interest between you and that you have no objection to our firm representing all individuals signing this agreement. If a conflict does arise in the future which is not promptly resolved, we may, if permissible, continue to represent _____. We would then refer any conflicted individual to an independent lawyer. There are some conflicts where we would not be able to continue to act for anyone in relation to the Claim.

Section 3.4-5 of the Rules of Professional Conduct states that before a lawyer acts in a matter for more than one client, the lawyer shall advise each of the clients that a) the lawyer is acting for both/all of them, b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned, and c) if a conflict develops which cannot be resolved, the lawyer cannot continue to act for both or all of them and may have to withdraw completely.

Expectations

What You Can Expect from Us

We will report to you on significant developments throughout. We will take appropriate steps to protect your interests and advance the Claim, which may include any of the following:

- (a) obtain and review relevant documentation;
- (b) conduct other investigations and/or research;
- (c) retain and instruct experts;
- (d) advise you if the Claim is likely viable;
- (e) make reasonable efforts to settle the case;
- (f) commence a lawsuit;
- (g) conduct examinations of any individual you sue;
- (h) prepare for and attend any court appearances, mediations, or pre-trial settlement conferences; and/or
- (i) prepare for and attend trial.

OPTIONAL

This agreement does not cover the services for an appeal. If after a trial, either side appeals, you would need to enter into a new agreement to cover the legal services associated with the appeal.

What We Expect from You

We expect that you will reasonably cooperate and communicate with us. We can provide our best advice and guidance only when we have all relevant information. It is vital that you be candid and honest at all times.

What The Claim is Worth

How much money you receive from the Claim is determined by a number of factors that are difficult to determine at the outset. These may include, the extent of the injury, the final prognosis, the economic consequences of the harm caused and/or legal restrictions on recovery. Once we have the necessary information, we will give you our opinion of the dollar value of the Claim. Our opinion may change as the Claim develops.

How Long It Will Take

It can take up to several years for a Claim to settle or go to trial. The amount of time the Claim takes depends on factors such as: the age of the injured person; how soon they recover from their injuries; when we receive information about what the future holds for the injured person and court schedules.

Settlement or Trial

We will try to settle your lawsuit to obtain a favourable settlement for you. If the Claim is settled, it would not have to go to trial. If we cannot settle the case, we will discuss with you the risks and potential benefits of a trial.

You Decide

We will give you our best advice and guidance; however, at all times you have the right to make the final choice regarding all major decisions, including settlement.

Section 2(10) of Regulation 195/04 requires a statement that informs the client that the client retains the right to make all critical decisions regarding the conduct of the matter.

How Much It Will Cost

Legal costs are made up of two components: (1) legal fees for our efforts working on the Claim; and (2) disbursements (explained below).

Legal Fees

You can choose to pay us for our work and disbursements on an ongoing basis, based on time spent at fixed hourly rates. Alternatively, you can pay a percentage of the amount recovered, but only if you are successful in recovering compensation. This is known as a contingency fee. **You have chosen to retain us on a contingency fee basis.**

If you do not receive money for the Claim, you do not pay us for legal fees.

If you receive money for the Claim, you agree to pay us a fee of 33.3% of the total amount recovered, all disbursements and HST.

Section 2(4) of Regulation 195/04 requires a statement that explains the contingency upon which the fee is to be paid to the solicitor.

Section 3.6-2 of the Rules of Professional Conduct provides that "a lawyer may enter into a written agreement in accordance with the Solicitors Act and the regulations

thereunder, that provides that the lawyer's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the lawyer's services are to be provided."

Section 2(3) of the Regulation 195/04 requires a statement indicating that:

- i. the client and the solicitor have discussed options for retaining the solicitor other than by way of a contingency fee agreement, including retaining the solicitor by way of an hourly-rate retainer.*
- ii. the client has been advised that hourly rates may vary among solicitors and that the client can speak with other solicitors to compare rates,*
- iii. the client has chosen to retain the solicitor by way of a contingency fee agreement,*
- iv. that the client understands that all usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the common law, apply to the contingency fee agreement.*

When the Percentage Fee May Be Different

OPTIONAL

You may want to proceed to trial even though we recommend that you settle. In this case, if the trial judgment turns out to be less than the settlement that we recommended, our percentage fee will be based on the amount of the settlement that we recommended to you, not the amount of the trial judgment. We will notify you in writing if this situation occurs to avoid any confusion.

Commentary on section 3.6 of the Rules of Professional Conduct indicates that a lawyer should provide to the client in writing, before or within a reasonable time after commencing a representation, as much information regarding fees and disbursements, and interest as is reasonable and practical in the circumstances, including the basis on which fees will be determined. Further, a lawyer should confirm in writing the substance of all fee discussions that occur as the matter progresses and a lawyer may revise an initial estimate of fees and disbursements.

If we successfully settle a lawsuit or we are successful at trial, we will seek a sum of money called "costs" from the Defendant. Any money received from the Defendant for costs are not included in the calculation of our fee. These costs are yours to keep and serve to partially offset our charges to you.

Section 6 of Regulation 195/04 requires that a contingency fee agreement that provides that the fee is determined as a percentage of the amount recovered shall exclude any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements.

Section 2(5) of Regulation 195/04 requires a statement that sets out the method by which the fee is to be determined and, if the method of determination is as a percentage of the amount recovered, a statement that explains that for the purpose of calculating the fee the amount of recovery excludes any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements.

Commentary to section 3.6-2 of the Rules of Professional Conduct provides that a lawyer and a client may agree that in addition to the fee payable under a written agreement, any amount arising as a result of an award of costs obtained as part of a settlement is to be paid to the lawyer, provided the agreement receives the required judicial approval under the Solicitors Act.

Charges for legal services vary. You can speak with other lawyers to compare rates and payment arrangements. A lawyer can never recover more in fees than you recover in damages or receive in a settlement.

Section 3(1) of Regulation 195/04 requires a statement that if the client is a plaintiff, a statement that the solicitor shall not recover more in fees than the client recovers as damages or received by way of settlement.

Section 7 of Regulation 195/04 states that a solicitor for a plaintiff shall not recover more in fees under the agreement than the plaintiff recovers as damages or receives by way of settlement.

Disbursements

Disbursements are the expenses we incur on your behalf. They are sometimes called legal expenses to distinguish them from legal fees. They may include: copying; postage; couriers; long distance; document binding; court and government filings; obtaining medical records; transcripts; court reporter services; investigators; expert consultants; demonstrative evidence; focus groups; witness attendance; travel; and research.

We are entitled to be reimbursed for any disbursements as a first charge on any money received for the Claim. This means that we have the legal right to be paid first from any money received for the Claim.

OPTION 1

Law Firm Initially Pays Disbursements

As part of this Contingency Fee Retainer Agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for the Claim, we will be reimbursed for all disbursements plus applicable taxes from any recovery. However, if we are not successful, we will not be reimbursed for these disbursements. Because we are providing funding for disbursements, and carrying the risk that we will not be repaid for these disbursements, the fee that we are charging is higher. You had the option of funding these disbursements yourself, thereby reducing your fee. However, like most of our clients, you have asked us to pay the disbursements.

OPTION 2

Client Responsible for Disbursements

You are responsible for reimbursing us for all disbursements regardless of the outcome of the Claim. We will wait until the conclusion of the Claim or the termination of this agreement for this payment. [OR We will bill you for the disbursements as incurred from time to time.]

Section 3(2) of Regulation 195/04 requires a statement in relation to disbursements and taxes, including the GST payable on the solicitor's fees, that indicates,

(i) whether the client is responsible for the payment of disbursements or taxes, and if the client is responsible for the payment of disbursements, a general description of disbursements likely to be incurred.

Section 3(2) of Regulation 195/04 provides that if the client is responsible for the payment of disbursements or taxes, and the solicitor pays the disbursements or taxes during the course of the matter the solicitor is entitled to be reimbursed for those payments as a first charge on any funds received as a result of a judgment or settlement of the matter. 3(2)(ii)

Initial Monetary Retainer

Monetary retainers are held in trust, and used only to pay disbursements on your file. We have agreed that at the outset, you will pay us a monetary retainer of: \$_____. Retainer funds will be paid to our firm, In Trust.

Billing

We will provide you with an account in writing setting out the amounts recovered for the Claim, for legal costs, and disbursements and showing the amounts charged to you under this agreement and the balance payable to you. You agree that any money from a settlement or judgment, including costs, will be paid directly to us to be held in trust by us subject to the terms of this Agreement. We will deduct our fee, disbursements, and applicable taxes and provide you the balance.

Section 3(4) of Regulation 195/04 provides that if the client is a plaintiff, the agreement shall include a statement that indicated that the client agrees and directs that all funds claimed by the solicitor for legal fees, cost, taxes and disbursements shall be paid to the solicitor in trust from any judgment or settlement money.

See also sections 3(2) and 9(1) and (2) of Regulation 195/04 regarding disbursements & taxes.

Interest will accrue on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.

The Solicitors Act allows a solicitor to charge interest on unpaid fees, charges or disbursements, calculated from a date that is one month after the bill is delivered (see section 33(1)).

You have the right to ask the Superior Court of Justice to review and approve your lawyer's bill, within 30 days from the date you receive it. After that you must ask the Court for permission, providing an explanation for the delay.

Section 2(3) of the Regulation 195/04 requires a statement that indicates that:

- iv the client understands that all usual protections and controls on retainers between a solicitor and client, as defined by the LSUC and the common law apply to the contingency fee agreement.*

Section 2(8) of the Regulation 195/04 requires a statement that informs the client of their right to ask the Superior Court of Justice to review and approve of the solicitor's bill and that includes the applicable timelines for asking for the review. (See also section 10 of Regulation 195/04)

Example

The following example is offered to help explain how you will be charged. It is not a prediction of your legal fees and disbursements or what the Claim is worth.

This example assumes a settlement made up of the following amounts paid by the Defendant:

Damages including interest	\$ 100,000.00
Costs	15,000.00
Disbursements	2,500.00
HST (on \$17,500)	2,275.00
Total Paid by the Defendant	<u>\$ 119,775.00</u>

We would charge thirty-three and one-third percent (33 1/3%) of the total damages. The account delivered to our client would be:

Fee (33 1/3 % of \$100,000)	\$ 33,333.33
Disbursements paid by the Defendant	2,500.00
Disbursements (not paid by the Defendant)*	500.00
HST (on \$36,333.33)	4,723.33
Total Fees and Disbursement Paid by You	<u>\$ 41,056.66</u>

* Defendants are not required to pay all disbursements. The disbursements charge of \$500.00 is in addition to the disbursements paid by the Defendant. The \$500.00 figure is simply an example. The disbursements not reimbursed by the defendant in your lawsuit may be higher or lower.

In this example, the client would receive \$78,718.34 after deduction of our charges.

Section 2.6 of Regulation 195/04 requires a simple example that shows how the contingency fee should be calculated.

Other Things You Need to Know

Structured Settlement

A structured settlement allows you to receive tax-free payments over a period of time instead of a lump sum. There may be advantages to having all or part of a settlement structured or a legal requirement to accept payments over a period of time.

If periodic payments are part of any settlement or judgment, you will still be responsible for payment of our account at the time of settlement based on the total paid for the Claim including any amounts to fund periodic payments.

Section 2(7) of Regulation 195/04 requires a statement that outlines how the contingency fee is calculated, if the recovery is by way of a structured settlement.

Persons Under a Legal Disability

Legal disability includes being under the age of 18, or mentally incapable.

If any person covered by this agreement is under a legal disability, this agreement and any legal charges must be approved by a judge, either before the agreement is finalized or as part of the approval of any settlement. Any money payable to such persons will be paid into court unless a judge orders otherwise.

Section 3(5) of Regulation 195/04 requires that if the client is a party under disability (in accordance with the Rules of Civil Procedure 7.08), then the agreement must include a statement that:

- i. the contingency fee agreement must be reviewed by a judge either before its finalization or as part of the motion/application for approval of a settlement or consent judgment,*
- ii. the amount of legal fees, costs, taxes and disbursements are subject to approval of judge upon review of settlement agreement or consent judgment, and*
- iii. any money payable to person under disability under an order or settlement will be paid into court unless judge orders otherwise (see below under 'Accounts and Billing Arrangements').*

Ending the Relationship

You End the Relationship

You can end this agreement at any time. If you terminate this agreement before the Claim is concluded, you agree to pay our reasonable charges for the work accomplished to that date as explained below.

If you do terminate this Agreement, you agree to sign a court form which tells the court that we no longer act for you.

We End the Relationship

There are circumstances where we may choose to end this agreement. For example, if we at any time determine that the Claim is unlikely to succeed or is no longer economically viable. In these circumstances, we may then enter into a new, non-contingency based fee agreement on terms to be negotiated at that time.

In the event that we terminate this Agreement and you ultimately received nothing for the Claim, we will not charge you legal fees. If we terminate the Agreement on the basis that in our opinion there is no reasonable prospect of recovery, then you agree to protect or pay for any disbursement we have advanced for your case, but we will not charge you legal fees. If we terminate the Agreement for any other reason, and you do recover

money for the Claim, then you agree to protect or pay for all disbursements plus reasonable charges as explained below.

Section 2(9) of Regulation 195/04 requires a statement that outlines when and how the client or the solicitor may terminate the contingency fee agreement, the consequences of the termination for each of them and the manner in which the solicitor's fee is to be determined in the event that the agreement is terminated.

Note: section 4(1)(a) and (b), set out matters which are not to be included in contingency fee agreements, including a provision that (a) requires the solicitor's consent before a Claim may be abandoned, discontinued or settled at the instructions of the client, and (b) prevents the client from terminating the contingency fee agreement with the solicitor or changing solicitors.

Reasonable Charges Explained

The factors that will determine our reasonable charges where this agreement ends prior to resolution of the Claim, include the time and effort required and spent by us; the usual hourly rates charged by us for non-contingency work; the complexity of the case and the responsibility and risk we assumed by representing you in the case; the difficulty and importance of your case; the expertise, experience, degree of skill and competency demonstrated by us in representing you; whether special skill or service was required and provided; the amount involved and/or value of the Claim; results obtained by us; and other relevant circumstances.

Our usual hourly rates, which generally increase annually, are:

Senior Lawyer	\$•.00
Junior Lawyer	\$•.00
Law Clerks	\$•.00
Articling Students	\$•.00
Summer Students	\$•.00

Protecting Our Account Explained

If you terminate this agreement and continue with the Claim, but are unable to pay our account at the time of termination, and we make arrangements to permit our reasonable charges to be paid upon the conclusion of the Claim, you agree that our reasonable charges will be a first charge on any money paid for the Claim. You also agree to sign a document at that time confirming this.

Your Risks

We will act in your best interests and give you our best legal advice. However, no lawyer can guarantee a successful outcome.

If a lawsuit is filed and the lawsuit or any significant pre-trial hearing is lost, the court may order you to pay a portion of the winning side's legal fees and disbursements. You are responsible for paying any such costs. Insurance may be available to protect you

from some or all of a costs award that you may have to pay. We have discussed the availability of this insurance.

Section 3(3) of Regulation 195/04 requires a statement which explains costs and the awarding of costs (which includes a statement discussing the client's potential liability for paying costs contribution.)

Understanding these risks, by signing this Agreement, you are expressly authorizing us to file a lawsuit on your behalf, if appropriate.

Confidentiality and Privacy

You authorize the collection and use of personal information in order to represent you. From time to time some of your personal information may be disclosed to third parties in connection with the Claim. You consent to us disclosing personal information where we reasonably consider it necessary to advance the Claim. *Law firms are obliged to comply with applicable provisions in the Personal Information Protection and Electronic Documents Act (PIPEDA). In particular, section 5(3) of PIPEDA provides that organizations (including law practices) "may collect, use or disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances".*

Communications

We will contact you at:

[Client name, address, phone and email]

You can contact us at:

[Law firm name, address, phone and email]

Under section 2(1) of Regulation 195/04, "the name, address and telephone number of the solicitor and client" must be included in the agreement.

Email

By initialing this paragraph, you authorize the sending of confidential or private correspondence, documents and other information related to the Claim to you through the Internet (and, particularly, e-mail) in an unencrypted condition and without any guarantee of security or protection from interception by a third party.

Initials

Included to obtain client permission to send confidential information by email

CONFIRMATION

This Contingency Fee Retainer Agreement contains the complete agreement between us regarding your relationship with us, and our legal fees and disbursements. It will not

be changed unless we both agree and sign any changes. It will legally bind anyone, such as heirs or legal representatives, who replace either you or us but it does not legally bind other lawyers who might act for you if you decide to end our relationship.

You confirm that you understand that all usual protections and controls on retainers between a lawyer and client, as defined by the Law Society of Upper Canada and the common law, apply to this agreement.

LAWYER

WITNESS

Date: _____

CLIENT ONE

WITNESS

Date: _____

CLIENT TWO

WITNESS

Date: _____

Section 1(1)(b) and (c) of Regulation 195/04 requires the agreement be dated and signed by the client and solicitor with each of their signatures being verified by a witness.

Section 1(2) of Regulation 195/04 obligates the solicitor to provide an executed copy of the contingency fee agreement to the client and retain a copy of the agreement.