

Retainer Agreement and Information Personal Injury – Contingent Fee

This document is a supplement to practicePRO's *managing the finances of your practice* booklet. It reviews the steps you can take to better manage the finances of your practice, and is available at www.practicepro.ca/financesbooklet

This document should be adapted to suit your practice and the matter it is being used for. See Note below.

Dear [client name]:

Re: Accident of [date of accident]

Thank you for asking my law firm to help you with your claim against [name of defendant]. I enjoyed meeting you, and I hope that together we will achieve a good result.

You told me that you were injured in this accident on [date of accident]. This date is very important because we must start your law suit within two years of it. Please tell us immediately if this date is incorrect.

Two important documents enclosed

I enclose two important documents with this letter:

- (1) Contract for Legal Services and Fees (two copies)
- (2) Steps in a Lawsuit

Please read the *Contract for Legal Services and Fees* carefully. It details the work my firm will do and the fees we will charge based on the discussions we had at our meeting. If you are satisfied with the contract, **please sign and date one copy and return it to us** so that I can begin work for you.

Steps in a Lawsuit explains the basic steps most lawsuits go through as well as some legal terms. I will tell you about specific developments that occur as your case progresses, and discuss with you any significant decisions you must make.

Returning letters and phone calls

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I try to return all telephone calls the same day they are received. If I'm in court or unable to call you, my secretary will return your call. Often you can get the information you need by asking to speak directly with **[him/her]**.

Letters are sometimes a better way to communicate than telephone calls. Whenever you have important information to give us that is not urgent, put it in a letter if you can. I will do the same for you.

I will send you copies of all letters and documents we receive and send out. You should keep them together in one place along with your copy of the *Contract for Legal Services and Fees*. If it isn't practical to mail long letters or documents, you'll be able to read them in our office.

Please call me if you have any questions or if I can help in any way.

Yours truly,

[law firm]

Contract for Legal Services and Fees

Part 1: Our Services

Legal services covered by this contract

We agree to act for you in your legal claim against **[name of defendant]**, the Defendant, once we receive a signed and dated copy of this contract. We will then be your lawyers throughout the whole legal process including going to trial if necessary. (The attached document called *Steps in a Lawsuit* explains the basic steps most lawsuits go through as well as some legal terms.)

At the same time, we will try to *settle* your case to obtain a favourable *settlement* for you. A settlement is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If your claim is settled, it would not have to go to trial.

We will keep you informed about matters that arise, and discuss with you any significant decisions you must make. We will give you our best legal advice, but you will make the final decisions. And we will only settle your lawsuit if we have your written consent.

Meeting your expectations

Money

You hope to get a fair and reasonable amount of money for your injuries to compensate you for:

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- (1) your pain and suffering;
- (2) the wages you lost when you could not work;
- (3) your medical, drug, and other expenses.

You also hope the Defendant will pay for at least some of the legal fees we will charge you.

Even if you win your lawsuit, the Defendant will only have to pay you some of these fees, not the whole amount. You still agree to pay us our fees which are discussed in Part 2 of this contract.

When we have the information we need, we will tell you how much money we think you could reasonably hope to get in a settlement or at trial. We will also tell you if our opinion changes as your case progresses.

Time

It can take up to two years or longer for a lawsuit to go to trial or settle. The amount of time your lawsuit will take will depend on such factors as how soon you recover from your injuries; when we receive the documents we need; how booked the courts are; and when the other lawyers are available.

Your role as client

You understand the importance of giving us all the facts and of being totally honest with us. We can only do our best job if we have your trust and are fully informed.

In particular, we ask you to give us all information you have, or have access to, which could help us in working on your lawsuit. We need copies of all letters and documents from ICBC; medical reports; physiotherapy records; income tax records; paycheque stubs; and medical, drug, and parking expenses. If necessary, we will ask you to give us written authorization to obtain this information.

Legal services not covered by this contract

If your case goes to trial and either you or the Defendant is unhappy with the court's decision, you or the Defendant could *appeal* the decision of the court to get a higher court to change that decision. We would tell you what we think the likely outcome of an appeal would be. But this contract does not cover the work that would be involved in such an appeal. If you wanted us to be your lawyers on the appeal, we would ask you to sign another contract to cover those new legal services and fees.

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This contract also does not cover any steps you may have to take to get the Defendant to actually pay you. If the court finds a defendant responsible for an accident, ICBC will usually pay the court judgment. But if ICBC does not have to pay the judgment or if the Defendant will not pay, then you have to start proceedings to *enforce* the court order or judgment to make the Defendant pay. If you ask us to help you *enforce* a court order or judgment, again, we would ask you to sign another contract. This contract does not cover such enforcement proceedings.

We have not agreed to give you legal advice or perform legal services for you relating to any other matter. **[If you are not being retained to assist with another possible cause of action you are aware of, add this sentence: In particular, although you told us [describe cause of action, for example: "you were let go from work"], you have not asked us to take any legal action concerning this.]**

Part 2: Our Fees, Expenses, and Billing Arrangements

Our fee is a percentage

There are two main ways a lawyer can bill you:

Option 1 — by charging an **hourly** fee for work done;

Option 2 — by charging a **percentage** of the amount of money awarded in a settlement or court judgment; or, *alternatively*, by accepting court ordered costs as the fee.

You have asked us to charge you fees based on a percentage of the amount of money awarded to you in a settlement or court judgment, or by accepting court ordered costs as the fee, whichever is greater (option 2). We agree.

The disadvantage to choosing a percentage arrangement (option 2) is that you may end up paying us more in legal fees than if we were to charge you an hourly fee for work done (option 1). This could happen if we are fortunate in favourably settling your lawsuit quickly.

There are also advantages to choosing a percentage fee. First, if we cannot settle your case or if you lose at trial, then you would only have to pay our expenses. You would not have to pay us any fees. Second, if we go to trial and win, the percentage fee may be less than an hourly fee if we have to spend a great amount of time.

Percentage based on work done

Our percentage fee will be less if your claim is settled than if it goes to trial. If it is settled, the fee will depend on the stage at which the lawsuit is settled. Our percentage fee will be:

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(1) [___, for example, 20]% of the settlement money

if we settle your claim before the *examination for discovery* (*Steps in a Lawsuit* explains this step)

(2) [___, for example, 25]% of the settlement money

if we settle your claim during or after the examination for discovery and at least 90 days before trial

(3) [___, for example, 30]% of the settlement money

if we settle your claim less than 90 days before trial or during trial, but before the court judgment

(4) [___, for example, 33-1/3]% of the trial judgment

if your claim does not settle and is decided by a trial.

There is one case where our percentage fee will differ. You may want to go to trial even though we recommend that you settle. If the trial judgment turns out to be less than the settlement we recommend, our percentage fee will be based on the amount of the higher recommended settlement, not the trial judgment.

Costs

If we successfully settle your claim or win at trial, we will seek a sum of money called *costs* from the Defendant to help cover some of our legal fees and expenses. If our fee is calculated as a percentage of the settlement or court judgment, you will receive the full amount of these costs since these costs are not included in the calculation.

Please note, however, that if we win an award from the court for costs payable by the Defendant to you, we may choose to receive the costs as our fee instead of accepting a percentage fee from you. You understand that the amount of costs may be higher or lower than a percentage fee would be.

If we choose to receive costs paid by the Defendant instead of a percentage fee, you would then receive 100% of the court judgement awarded to you on your claim, less any expenses.

Legal expenses (also known as disbursements)

In addition to our percentage fee or court-ordered costs as our fee, you agree to pay all expenses, even if we cannot settle your claim or lose at trial.

Minor expenses

We will charge you for the minor ongoing expenses that we have to pay. Some of these expenses are long distance telephone calls; photocopying costs; costs to deliver documents to court or the

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other lawyers; faxes; court filing fees (which the court charges to keep an official record of court documents); and necessary land or company registry searches (for example, to find out the proper name of the defendant).

We will regularly bill you for these minor expenses once they total \$[**amount**] and we will detail all expenses in our bills. Please pay our bills within 30 days. After 30 days we will begin charging interest at [**XX**]%.

If we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to reimburse you for some of these expenses.

Major expenses

We may have to hire other people such as court reporters, expert witnesses, accountants, and property appraisers to help us with your lawsuit. If we need to hire these people, we will first discuss the matter with you.

We usually ask you to pay these major expenses in advance, or we will have the bill sent directly to you to pay. Again, please pay these bills within 30 days. After 30 days we will begin charging interest at [**XX**]%.

Also, as with the minor expenses, if we successfully settle your claim or win at trial, the settlement or court judgment most likely will require the Defendant to pay you costs to reimburse you for some of these expenses.

GST

In addition to our legal fees and expenses, you agree to pay any Goods and Services Tax (GST) that we must charge you.

Billing Arrangements

You agree that any money from a settlement or judgment, including costs, will be paid directly to us in trust. We will then deduct our fee, any GST, and any unpaid expenses, and give you the balance.

Part 3: Dealing with Each Other

Ending the relationship

By you

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You are free to end our services before your case is completed by writing us a letter or note. If you do, you agree to pay our expenses and an hourly fee based on the actual time spent up to the date of ending those services.

Our hourly fee will depend on which lawyer or assistant helps with the work. I will be the main lawyer responsible for your case, but some work may need to be done by a more senior lawyer, and other work can be done equally well by a more junior lawyer. There are also many services, such as gathering information and preparing routine documents, that our *paralegal* assistant is well qualified to perform. A paralegal works under the supervision of a lawyer, but may not give legal advice. Our paralegal can serve you at lower cost than one of our lawyers can.

If you end our relationship, our hourly fee will be based on these rates:

My rate	[\$amount] per hour
[senior lawyer's] rate	[\$amount] per hour
[junior lawyer's] rate	[\$amount] per hour
[paralegal's] rate	[\$amount] per hour

We would ask you to sign a court form which tells the court we no longer act for you.

By us

We are free to withdraw our services at any time if we have a good reason. For example, we would withdraw our services if a client:

- (1) did not cooperate with us in any reasonable request;
- (2) asked us to do something unethical or illegal;
- (3) did not pay our bills on time without making other arrangements for payment.

Again, you agree to pay our expenses and an hourly fee for our legal services up until the time we stopped acting for you.

We would also have to withdraw our services if we learned of a *conflict of interest* that would make it unethical for us to continue to act for you. A conflict of interest occurs when what is best for one of our clients somehow is not best for or hurts another of our clients. If we have to withdraw our services for you because of a conflict of interest, you would have to pay our expenses up until the time we stopped acting for you.

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Confidentiality

As your lawyers, we have to share relevant information about your case with the Defendant's lawyers and the court. But unless we need to share this information as part of our work, all information you give us will be kept confidential between us.

No guarantees of success

We will try our best in acting for you and give you our best legal advice. However, you understand that we cannot guarantee the successful outcome of your lawsuit. Remember that all lawsuits involve risks and uncertainties in the law, the facts, and the evidence.

Part 4: Signing this Contract

This contract contains the whole agreement between us about our relationship with each other and our legal fees and expenses. It will not be changed unless you and 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.

If you are satisfied with this contract, please sign and date both copies and return one of them to us.

Keep one copy for your records. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please write or call us.

Lawyer

Date

I have read this contract carefully and I agree with it.

Client

Date

Steps in a Lawsuit

The timing of a lawsuit is difficult to predict. It depends on many things, including actions the Defendant takes, court schedules, and decisions you make. A lawsuit can take up to two years or longer to settle or go to trial.

However, most lawsuits go through the same basic steps, although not always in the same order.

Some lawsuits skip some steps, and some steps are repeated many times over.

The steps listed here are the main steps that occur in a lawsuit. They will give you a general idea of what to expect.

1. Gathering the Facts

With our client's help, we gather all the available facts concerning the claim, including interviewing and taking statements from witnesses. We sometimes hire investigators or experts to help us, so this step can involve expenses.

2. Starting the Lawsuit

We begin the lawsuit by preparing the necessary court documents and *filing* them in court. This means the court date-stamps all copies of the documents, keeping one copy for their official record. We then deliver filed copies to the Defendant's lawyers. This step also involves expenses such as court filing fees.

3. Interim Applications

After we start a lawsuit, but before trial, we or the Defendant's lawyers sometimes need to ask the court to decide certain things. Going to court to ask for an order is called an *interim application*. These interim applications are usually about how the lawsuit should be handled. For example, we might ask the court to order that the Defendant show us a particular letter or document that the Defendant would rather not let us see.

4. Examination for Discovery

After gathering the facts, either we or the Defendant's lawyers arrange an *examination for discovery*. At the examination for discovery, we question the Defendant under oath about the accident. We also ask the Defendant to show us what relevant documents the Defendant has, and to tell us about all relevant documents he or she has ever owned or had access to. In return, the Defendant's lawyers also question our client about the accident and the injuries he or she suffered. We give the Defendant copies of the documents we have that relate to the lawsuit, and our client describes all relevant documents he or she once had, or had access to.

5. Review of the Law

Once we have a good idea of all the facts, we review the law. We then give our client our legal opinion about what the likely outcome of a trial would be, and how much money our client can expect to get.

6. Negotiation and Settlement

When it is appropriate, we talk with the Defendant's lawyers to see if they will *settle* the claim. A *settlement* is an agreement between the parties to a lawsuit which sets out how they will resolve the claim. If the claim is settled, it does not go to trial.

7. Preparation for Trial

We prepare the case for trial, including getting all the necessary documents together, arranging for witnesses to attend, and preparing any legal opinions.

8. Trial

We act for our client at the trial. When the judge has decided the case, which could be a few days or weeks after the trial, we prepare the court order for the judge to sign, or approve how the other lawyers write up the judgment to make sure it is correct.

9. Completing the Claim

We do all the work necessary to complete the claim. This includes giving our client money from a settlement or judgment, after we have deducted our fees and expenses. However, it does not include starting new steps such as *enforcing* or *appealing* a court judgment. To *enforce* a judgment means to start proceedings to force the Defendant to actually pay what he or she has been ordered to pay. To *appeal* a judgment means to start work to get a higher court to change the original court's judgment.

NOTE: Model retainers are provided by LAWPRO for your consideration and use when you draft your own documents. They are NOT meant to be used "as is". Their suitability will depend upon a number of factors, such as the current state of the law and practice in each area of law, your writing style, your needs, and the needs and preferences of your clients. These documents may need to be modified to correspond to current law and practice.

Retainer letters or agreements should include reference to the following:

- identity of the lawyer and the client;
- scope of service (is your work to be limited in any way?);
- obligations of client;
- delegation of work;
- expected chronology;
- fee arrangement;
- billing format;
- rate changes;
- withdrawal or termination of services; and
- conflicts of interest.

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