

Retainer Agreement Personal Injury – Hourly Fee



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

[Firm Name, Address, Telephone Number, Email]

[Date]

[Client Name]
[Client Address]

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. We look forward to representing you on the basis set out below.

You told me that you were injured in this accident on [date of accident]. This date is very important because we must start your lawsuit 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

I try to return all telephone calls the same day they are received. If I'm in court or unable to call you, my assistant 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, put it in a letter or email. I will do the same for you.

I will send you copies of all 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 or email 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,

[Lawyer signature]

[Lawyer name]

[law firm]

[address]

[telephone number]

Contract for Legal Services and Fees

Part 1: Our Services

Legal services covered by this contract

You retain us to represent you in connection with **[description of matter]**. We anticipate that our representation will involve taking the following steps on your behalf:

(a) **[describe]**

(b) **[describe]**

(c) **[describe]**

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 will 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.

Legal services not covered by this contract

At this time we have not been retained to represent you generally or in connection with any other matter. We will not be performing the following services:

(d) **[describe, e.g., accident benefits, long term disability, CPP-disability, social security, etc.]**

(e) **[describe]**

(f) **[describe]**

[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.]

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.

This contract also does not cover any steps you may have to take to get the Defendant to actually pay you. 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.

Meeting your expectations

Money

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

- (1) your pain and suffering;
- (2) the wages you lost when you could not work;
- (3) your medical, drug, and other out of pocket 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 relating to the accident; medical reports; physiotherapy records; income tax records; paycheque stubs; and medical, drug, and parking receipts. If necessary, we will ask you to give us written authorization to obtain this information from other parties.

Sole Representation

We will be representing solely you in this matter. Our representation of you does not include the representation of related persons or entities, such as family members; friends; the individuals or entities that are shareholders, directors or officers of a corporation, its parent, subsidiaries or affiliates; partners of a partnership or joint venture; or members of a trade association or other organization. In acting for you, we are not acting for or taking on any responsibilities, obligations or duties to any such related persons or entities and no lawyer-client or other fiduciary relationship exists between us and any such related persons or entities.

[Multiple Clients – Optional in the alternative if not sole representation]

Representing Multiple Clients with Apparent Same Interest (Joint Representation)

As you know the following **[party/parties]** are involved with you in this matter and you and they have asked us to represent all of you:

[name(s)]

We have discussed with you the principles we must follow of undivided loyalty. No information received from one of you as a part of the joint representation can be treated as confidential as between all of you. If we should receive information from one of you which we are instructed to keep confidential as between all of you, we will have to stop acting for all of you.

We have discussed these matters with you and have concluded that, at least at present, each of your individual interests in this matter are the same. The areas in which these individual interests may diverge in the future are:

[describe]

If we agree to act for one of you in a matter separate from this one, and we receive confidential information from that separate matter that is relevant to this matter, and the client in that separate matter wishes to keep it confidential, then

[Lawyer when drafting agreement must choose (i) or (ii) following]

(i) the information must not be disclosed to the other in this matter. This means we must withdraw from the joint representation.

or

(ii) the information must be disclosed to each of you in this matter and we may continue to act jointly for both of you.

Other conflicts may arise that cannot as yet be foreseen. A conflict of interest occurs when what is best for one of our clients somehow is not best for or hurts another of the firm's clients. At the present time we can represent all of you. However, if it later becomes apparent that there is a conflict, we confirm each of your instructions to attempt to resolve this conflict. If a successful resolution cannot be accomplished in a timely way or at all, or if our attempts to resolve the issue cause us ethical concerns, we will have to withdraw from representing all of you.

[if applicable] We confirm your agreement that if a contentious issue between you and _____ arises, we may continue to advise _____ about the contentious matter and that I we will refer you to another lawyer or paralegal.

Our billings will name and be sent to all of you and each client is responsible for payment of the entire amount. You will need to decide between you how our accounts will be divided.

Part 2: Our Fees, Expenses, and Billing Arrangements

Our fee is an hourly fee

Generally, our fees will be based on an hourly rate and will depend on the actual time spent. I will be the main lawyer responsible for your case, but from time to time other people in our office may do some of the work. 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.

Our hourly rates are:

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

Fees to Reflect the Value of our Services

Although the fees billed to you by my firm will generally be based on the actual time spent, the total fees charged will reflect the value of our services. For example, if we obtain an exceptionally good result for you, our total fees may be higher than a simple calculation of the total hours spent. When determining what the value of our services is, we will consider whether:

- we obtained an exceptionally good result
- we had to put aside work on other files because yours was urgent
- we had to spend time outside normal business hours
- your case was extremely complex

Fee Estimate

Based on the information you have given us, we estimate that our total fees will be in the range of \$[amount] to \$[amount]. We based our initial estimate on these assumptions (*Steps in a Lawsuit* explains some of the terms):

[list assumptions here, for example:

- examinations for discovery will take one full day
- there will be two pre-trial applications
- the trial will take one full day]

If your case develops differently than we expect, we will have to adjust our fee estimate after we first discuss this with you.

We do not guarantee this fee estimate. But it is our best estimate of what our services will cost based on our experience and the information we have now.

[Optional – if you want to specifically charge for your first meeting:]

First meeting

The fee for our first meeting on [date of meeting] in my office is \$[amount]. It will be included in our first bill.

Legal expenses

In addition to our fees, 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 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).

Major expenses

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

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 the legal fees and expenses we will charge you.

HST

In addition to our legal fees and expenses, you agree to pay any Harmonized Sales Tax (HST) that we must charge you.

Billing Arrangements

Retainer

Before we start work on your file, you agree to pay us a deposit of \$[**amount**], called a retainer. We will keep this retainer in our general trust account (where we keep our clients' money) for your benefit until we send you our first bill. At that time, we will transfer money from your retainer to help pay that bill. When the retainer has been used up, we may ask you to pay us another retainer. At the end of your case, we will refund any money left over in your retainer, after deducting any unpaid or final bills, any HST and any unpaid expenses.

Periodic Billings

We will bill you for our services and minor expenses as work is done. For example, we will bill you immediately after any pre-trial application or after examinations for discovery. Our bills will detail the work done and the expenses we have had to pay.

We will usually ask you to pay major expenses (for example, to hire expert witnesses) in advance or we will have the bill sent directly to you to pay.

Please pay our bills within 30 days. If you are unable to pay our bills on time and have not already made prior arrangements with me, please discuss this with us immediately.

Interest

We will charge you interest of one percent (1%) per month (12% per year) on the balance of any bills that remain unpaid for more than 30 days. We will tell you in advance if we change the interest rate.

Deduction from Settlement or Judgment

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

Part 3: Dealing with Each Other

Ending the relationship

By you

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 fees (based on our hourly rates) and expenses up to the date of ending those services. We will ask you to sign a court form which tells the court we no longer act for you.

By us

Subject to our obligations to you to maintain proper standards of professional conduct, we reserve the right to terminate our services to you for good reasons which include, but are not limited to:

- (a) if you fail to cooperate with us in any reasonable request;
- (b) if our continuing to act would be unethical or impractical; or
- (c) did not pay our bills on time without making other arrangements for payment.

You agree to pay our fees and expenses up until the time we stop acting for you.

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.

You confirm communication via the following is confidential and consent to me/our firm contacting you at:

[client address]
[client home number]
[client cell number]
[client email]

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 want us to proceed on the basis described above, please **sign both copies of this agreement in the space provided and return one copy to us**, together with a retainer in the sum of \$[amount], in the enclosed self-addressed envelope. If you decide that you do not want us to proceed on your behalf in this matter, please inform us promptly.

Lawyer's signature

Date

Client's signature

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 & DISCLAIMER: 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. These documents do not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research.

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.

Drafted originally by the Law Society of British Columbia, LAWPRO has revised this retainer for Ontario lawyers with permission. LAWPRO gratefully acknowledges the work of the Law Society of British Columbia in preparing this document.