

# Retainer Agreement Family Law



**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: [description of matter]

## Part 1: Our Services

### Legal Services Covered by This Agreement

You have asked me to provide legal service to you with respect to [description]. I agree to provide these services once I have received a signed and dated copy of this contract. I will then be your lawyer throughout the whole legal process, including trial, if necessary.

The legal services which may be required, if you instruct me to proceed, are as follows: [amend as necessary]

1. Attempting to negotiate a settlement;
2. Commencing proceedings for a division of family assets, maintenance and custody;
3. Defending proceedings for a division of family assets, maintenance and custody;
4. Applications to court for restraining orders, interim maintenance, interim custody, and possession of property;
5. Obtaining financial disclosure from your spouse;

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6. Preparing for, attending and conducting examinations for discovery;
7. Preparing a separation agreement;
8. Preparing for and attending trial;
9. Obtaining a divorce;
10. Obtaining judgment, settling the order and enforcing the order granted by the court.

**[All of the above may not be required.]**

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

(a) **[describe]**

(b) **[describe]**

(c) **[describe]**

**[Optional]** Your desired outcome and time frame for resolution of this matter is as follows:

**[describe]**

**[Optional]** I will work with you towards your desired outcome. However, all legal actions are subject to many possible variables such as the demeanour and recollection of witnesses, the availability of substantiating documents and other evidence, and the evidence marshalled by the other side—all of which affect the decision of a judge or jury. Accordingly, I cannot guarantee that your desired result will in fact be achieved. For us to work towards your desired outcome, it will be necessary for you to abide by the terms described in this agreement.

I will keep you informed about matters that arise and discuss with you any significant decisions you must make. I will give you my best legal advice, but you will make the final decisions. Significant decisions may require your written consent.

## **Time**

It can take a number of years for family law matters to be settled by either trial or agreement. Factors which determine the time required include: your spouse's frankness and cooperation in disclosing information and producing documents, the need for evaluations of property, businesses and pensions, the need for interim applications to court, the number of documents involved, the degree of hostility between you and your spouse, the wait for an available court date (and the possibility that the court may be overbooked and your case postponed to a later

date), and the availability of your spouse's lawyer. I may have little or no ability to assist you with an early resolution of your legal matters, depending on the cause of the delay.

I will keep you fully informed of all events as they develop in your case, but there may be periods of unavoidable delay. I will do what I can to minimize this problem.

### **Your Role as Client**

You understand the importance of giving me all the facts and of being totally honest with me. I can only do my best job if I have your trust and am fully informed.

In particular, I ask you to give me all information you have, or have access to, which could help me in working on your case. In that regard, I enclose two copies of the financial statement form and ask you to complete as much of it as you can and return a copy to me.

I will also need copies of your three most recent income tax returns, copies of three recent pay slips (or Employment Insurance benefit statements) and your most recent Property Assessment Notice, if any real estate is owned in whole or in part by either you or your spouse.

If your or your spouse's property or financial circumstances change, please inform me immediately.

If your marital difficulties include problems of harassment or abuse by your spouse, please keep a daily written record of such problems and provide me with a copy monthly.

### **Sole Representation**

I will be representing solely you in this matter. My 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, I am 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)]**

I have discussed with you the principles I 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 I should receive information from one of you which I am instructed to keep confidential as between all of you, I will have to stop acting for all of you.

I 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 I agree to act for one of you in a matter separate from this one, and I 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 I must withdraw from the joint representation.

*or*

(ii) the information must be disclosed to each of you in this matter and I 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 I can represent all of you. However, if it later becomes apparent that there is a conflict, I 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, I will have to withdraw from representing all of you.

**[if applicable]** I confirm your agreement that if a contentious issue between you and \_\_\_\_\_ arises, I may continue to advise \_\_\_\_\_ about the contentious matter and that I 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.

### **Legal Services Not Covered by this Contract**

If your case goes to trial and either you or your spouse is unhappy with the court's decision, you or your spouse could appeal the decision of the court to get a higher court to change that decision. I will tell you what I 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 me to be your lawyer on the appeal, I would ask you to sign another contract to cover those new legal services and fees.

I have not agreed to give you legal advice or perform legal services for you relating to any other matter.

**[OR, optional statement if other legal work was discussed]** In particular, although you told me **[describe the cause of action, for example, "you were let go from your work"]**, you have not asked me to take any legal action regarding this.

## **Part 2: Fees, Expenses and Billing Arrangements**

### **Our Fees**

Generally, my 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 my 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 my paralegal assistant is well qualified to perform and at a lower cost. The paralegal works under the supervision of a lawyer, but may not give legal advice. My paralegal is **[name]**.

Billable legal services include preparation of and responding to correspondence, all telephone calls and office attendances, examinations for discovery, negotiations, preparation of documents and preparation for trial.

My firm's hourly rates are:

My rate	[\$ <b>amount</b> ] per hour
<b>[senior lawyer's]</b> rate	[\$ <b>amount</b> ] per hour
<b>[junior lawyer's]</b> rate	[\$ <b>amount</b> ] per hour
<b>[paralegal's]</b> rate	[\$ <b>amount</b> ] per hour

In the event that your case proceeds to trial, my services will be charged at \$**[amount]** per day, exclusive of trial preparation. If your case requires a junior lawyer to accompany me to Court, that lawyer's services will be charged at \$**[amount]** per day.

If my firm's fees increase, which they may, I will give you at least three months notice of such change.

### **Legal Expenses (also called disbursements)**

In addition to my fees, you agree to pay all expenses, even if I cannot settle all your family law issues or we lose at trial.

### *Minor Expenses*

I will charge you for the minor ongoing expenses (also called disbursements) that I have to pay. Some of these expenses are long distance telephone calls, photocopying costs, costs to deliver documents to court or to your spouse's lawyer, faxes, court filing fees, and necessary land, company registry or other searches.

This letter authorizes me to pay all necessary minor expenses as required from time to time from your retainer (see below for further information on retainers).

### *Major Expenses*

I may have to hire other people, such as court reporters, expert witnesses, accountants, and property appraisers to help with your case. If I need to hire these people, I will first discuss the matter with you. It will be your responsibility to pay for their services, either directly or as part of the retainer you will provide to me from time to time.

### **Costs**

If we successfully settle your claim or win at trial, we will seek a sum of money called costs from your spouse. These costs, if we get them, will be applied to reduce any fees still owed to me by you, or will be sent to you if you have fully paid our accounts.

If I am not successful in settlement or at trial, your spouse may seek costs against you. You are responsible for paying the costs ordered to your spouse.

### **HST**

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

### **Billing Arrangements**

#### *Retainer*

**[Option 1]** Before I start work on your file, you agree to pay me a deposit of \$[amount], called a retainer. I will keep this retainer in my general trust account (where I keep my clients' money) for your benefit until I send you my first bill. At that time, I will transfer money from your retainer to help pay that bill. When the retainer has been used up, I may ask you to pay me another retainer. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any HST and any unpaid expenses.

**[Option 2]** I understand that you are not in a position to pay me an initial retainer at this time or pay your account from time to time, but rather you must wait until you have obtained a property

settlement or judgment. However, I will be sending you an account for fees and expenses as if you were able to pay and will be charging you interest as set out below.

I will require a retainer from you in the amount of \$[amount] to cover the HST that will be charged for each of your accounts and must be remitted by us to the government. When this retainer has been used up, I may ask you to pay me another retainer. If your financial situation changes and you become able to pay your accounts as they become due, please do so immediately. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any HST, and any unpaid expenses.

When you obtain an interest in property, I will ask you to provide security for our accounts by granting this firm a mortgage. You will be asked to seek the advice of another lawyer before executing the mortgage.

**[Option 3]** I understand that you are not in a position to pay your anticipated accounts as they are rendered, but you will pay me an initial retainer of \$[amount] and 12 postdated cheques in the amount of \$[amount]. I will be rendering to you periodic billings and will be charging you interest as is described below on any outstanding amounts. If your financial situation changes and you become able to pay my accounts in full as they become due, you will do so immediately. All funds received will be applied firstly to pay HST and then to pay your account. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any HST and any unpaid expenses.

### *Periodic Billings*

I will bill you from time to time for my services and minor expenses as work is done. My bills will detail the work done and the expenses I have had to pay.

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

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

### *Interest*

I will charge you interest of [one] percent per month ([12]% per year) on the balance of any bills that remain unpaid for more than 30 days. I will tell you in advance if I 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 me in trust. I 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

### Fraud Prevention

To prevent fraud and ensure the safe and accurate receipt, release, and transfer of any funds or assets, the following steps will always be taken to safeguard such assets:

1. We will only accept funds [or assets] from you [or additional party] by way of:
  - Electronic funds transfer to our trust account numbered \_\_\_\_\_
  - Wire transfer to our trust account numbered \_\_\_\_\_
  - Certified cheque delivered to us at \_\_\_\_\_
  - Additional method of funds or asset transfer \_\_\_\_\_
  
2. We will only transfer funds [or assets] to you [or additional party] by way of:
  - Electronic funds transfer to our trust account numbered \_\_\_\_\_
  - Wire transfer to our trust account numbered \_\_\_\_\_
  - Certified cheque delivered to us at \_\_\_\_\_
  - Additional method of funds or asset transfer \_\_\_\_\_
  
3. We will only release funds or assets to a third party upon receiving verbal confirmation of the transfer from you and any other party necessary to confirm the veracity of the transfer details.
  
4. You [or another party] should not expect to receive any revised instructions for the transfer of funds or assets from us. If you [or another party] receive any written communication advising of such a change that appears to come from us, immediately contact us at [insert telephone number] to verbally confirm these changes.
  
5. If we receive any changes to your [or another party's] contact information, or any changes to the instructions for the transfer of funds or assets as set out above, we will not act on these changes until we have verbally confirmed the new instructions in-person or by calling you [or another party] at the following phone number: **[insert phone number]**

### Telephone Calls

I will try to return your telephone calls or respond to your letters as quickly as possible, but I will not always be able to do so on the same day that you have left a message. I am primarily a courtroom lawyer and am often in court. When representing a client in court, I devote my time during that period to that client and have only a limited ability to return other clients' calls or answer their letters. When it is your turn to go to trial, if that happens, I will be devoting my time to you and your case.

I remind you that I will bill you for all telephone calls and meetings, including any time I may need to prepare for such conversations and document them afterwards. In order to receive the most value for the services you pay for, I will try to be as efficient as possible. In turn I hope you



will limit our conversations in time and subject matter to those topics necessary to resolve your family problems.

If you have any questions or need to provide me with additional information, I suggest that you write to me or, if I am not available, please speak to my paralegal, **[name]**, who may be able to assist you or can pass on a detailed message to me.

### **Ending the Relationship**

#### *By You*

You have the right to terminate my services to you upon written notice to me. If you do, you agree to pay my fees and expenses for my legal services up until the time I stop work. I will ask you to sign a court form which tells the court I am no longer your lawyer.

#### *By Me*

Subject to my obligations to you to maintain proper standards of professional conduct, I 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 me in any reasonable request;
- (b) if you misrepresented facts or failed to disclose important facts;
- (b) if my continuing to act would be unethical or impractical;
- (c) if my retainer has not been paid; or
- (d) if you fail to pay my accounts when rendered.

If you terminate my services or I withdraw, you would only have to pay my fees and expenses up until the time I stopped acting for you.

### **Confidentiality**

As your lawyer, I have to share relevant information about your case with your spouse's lawyer and the court. But unless I need to share this information as part of my work, all information you give me 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 Guarantee of Success

I will try my best in acting for you and give you my best legal advice. However, you understand that I cannot guarantee the successful outcome of your family problems. Remember that these issues may involve risks and uncertainties in the law, the facts, and the evidence.

## Part 4: Review of this Contract

For 90 days after signing this contract or after our relationship has ended, you have the right to ask the court to review this contract to see if it is unfair or unreasonable. You have this right even if you have paid my legal fees or expenses.

I also invite you to ask another lawyer to review this contract, if you wish, to make sure it is fair and reasonable.

## Part 5: Signing this Contract

This contract contains the whole agreement between us about our relationship with each other and my legal fees and expenses. It will not be changed unless you and I both agree and sign any changes. It will legally bind anyone, such as heirs or legal representatives, who replaces either you or me, but it does not legally bind other lawyers who might later act for you if you decide to end our relationship.

If you want me to proceed on the basis described above, please **sign both copies of this agreement in the space provided and return one copy to me**, together with a retainer in the sum of \$[amount], in the enclosed self-addressed envelope. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please inform me promptly.

\_\_\_\_\_  
Lawyer's signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Client's signature

\_\_\_\_\_  
Date

**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.