

TAB 2
Report to Convocation
February 24, 2022

Professional Regulation Committee
Paralegal Standing Committee

**Professional Regulation
Committee Members:**

Megan Shortreed (Chair)
Michelle Lomazzo (Vice-Chair)
Andrew Spurgeon (Vice-Chair)
Gerard Charette
Etienne Esquega
Julian Falconer
Jacqueline Horvat
C. Scott Marshall
Geneviève Painchaud
Jonathan Rosenthal
Quinn Ross
Nicholas Wright

**Paralegal Standing
Committee Members:**

Robert Burd (Chair)
Geneviève Painchaud (Vice-Chair)
Jack Braithwaite
Cathy Corsetti
Seymour Epstein
Shelina Lalji
Marian Lippa
Michelle Lomazzo
Trevor Parry
Quinn Ross
Chi-Kun Shi
Doug Wellman
Claire Wilkinson

Purpose of Report: Decision

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Tab 2.1

Professional Regulation Committee

Paralegal Standing Committee

Amendments to the Rules of Professional Conduct and Paralegal Rules of Conduct – Contingency Fee Agreements

February 24, 2022

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Motion

That Convocation adopt the amendments to the *Rules of Professional Conduct* and the *Paralegal Rules of Conduct* at Tabs 2.1.1 and 2.1.2, as recommended by the Professional Regulation Committee and the Paralegal Standing Committee.

Context

On July 1, 2021, new requirements came into effect in respect of contingency fee agreements. Those requirements were based on a package of reforms approved by Convocation in December 2017, January 2018, and October 2020, and adopted by the Ontario government. The reforms were intended to address a number of longstanding issues with the contingency fee regime in the province, by enhancing consumer protection, improving transparency and fairness for clients, and ultimately facilitating access to justice, while supporting efficiency and burden reduction for licensees.

The reforms included a new regulation made under the *Solicitors Act* requiring, among other things, use of a standard form contingency fee agreement.¹

Following the launch of the new requirements in July, some licensees raised concerns not previously heard that the Standard Form Agreement did not provide options that reflected their practice area or their specific fee arrangements. The Law Society relayed those concerns to the Ministry of the Attorney General.

In addition, the Ontario Bar Association (OBA) recommended a full exemption from the Regulation's requirements for sophisticated "organizational clients", defined in the Regulation, who they indicated had advised that the requirements could not be operationalized, added costs, and provided no measure of consumer protection.

As a result, the government amended the Regulation effective January 1, 2022.² In addition, the Standard Form Agreement, which is incorporated into the Regulation, was amended to provide more flexibility and options for licensees, while maintaining enhanced consumer protection and improving transparency and fairness for clients.³

The proposed amendments at Tabs 2.1.1, 2.1.2, as well as the amendments to the *Paralegal Professional Conduct Guidelines*⁴, align the conduct rules for lawyers and paralegals with the changes to the legislative regime.

Amendments to the Contingency Fee Regime

The Regulation and the Standard Form Agreement have been amended effective January 1, 2022, as follows:

¹ The full list of reforms are available in the Professional Regulation Committee report to Convocation of October 22, 2020 (available [here](#))

² See [O. Reg. 836/21: Contingency Fee Agreements](#)

³ The Standard Form Agreement is available on the Law Society's website [here](#).

⁴ Amendments to the *Paralegal Professional Conduct Guidelines*, as reviewed by the Paralegal Standing Committee are at Tab 2.1.3.

1. Ontario Regulation 563/20 made under the *Solicitors Act* has been amended:

- Subsection 7(1) confines the requirement to use the Standard Form Agreement to those types of arrangements considered to be typical contingency fee arrangements (i.e. where the licensee's fee is a percent or a proportion of the damages, compensation or other monetary recovery).

This excludes fee arrangements such as bonus payments or uplift fees.

- Subsection 7(2) lists prescribed information that must be included in a contingency fee agreement in circumstances not addressed in subsection 7(1) (e.g. bonus payments or uplift fees that are contingent on success).
- Subsection 7(3) exempts organizational clients from the requirement to include prescribed information in their contingency fee agreements, and maintains the existing exemption from the requirement to use the Standard Form Agreement.

In addition, the definition of organizational clients is expanded to include the entity responsible for the payment of the client's legal fees, and to apply to where the organization, together with any affiliates, members of the same joint venture or any other related persons or entities:

- (a) Employ more than 25 individuals;
- (b) Employ, as a legal advisor on a full-time basis, one or more persons authorized under the *Law Society Act* to practise law in Ontario; or
- (c) Have gross annual revenues that exceed \$10 million.

2. The prescribed Standard Form Agreement has been amended to:

- Include additional fee options that could typically pertain to standard contingency fee arrangements:
 - Providing that the solicitor's fee may be the lesser of an hourly rate or a contingency fee; and
 - Providing for a contingency fee that applies only to an increase that the licensee negotiates or litigates on the client's behalf (e.g. a contingency fee of X% on any settlement or award amount that exceeds \$X).
- Provide for more options to address dispute resolution processes (e.g. adding that a contingency fee may apply to "amounts recovered" in addition to "settlements or awards"; and the flexibility to insert stages other than litigation stages, where a graduated contingency fee would apply).
- Provide for the ability to delete the sections relating to costs if costs are not applicable to the process, and changed the description of partial indemnity for costs from 60-80% of fees to a "certain percentage".
- Provide a new option regarding the direction of funds for legal fees, costs, taxes and disbursements to track the requirement in section 3 of the Regulation.

Proposed Rule Amendments

The *Solicitors Act* and its Regulation primarily address the form and substance of licensee contingency fee agreements, including a requirement to use the prescribed Standard Form Agreement in specified circumstances.

The *Rules of Professional Conduct*, the *Paralegal Rules of Conduct*, and the *Paralegal Professional Conduct Guidelines* (together the “Rules”) address transparency and disclosure by licensees who enter into contingency fee agreements, but do not mandate specific requirements with respect to the retainer agreement. Under the Rules, licensees who enter into contingency fee agreements are essentially subject to three requirements to enhance consumer protection and improve transparency and fairness for clients:

1. Provide clients with a copy of the [Consumer Guide](#);
2. Disclose certain prescribed information when billing for the contingency fee; and
3. Disclose the general maximum contingency fee percentage to potential clients.⁵

These requirements are not addressed by the government’s legislative regime and, therefore, significant rule amendments are not required as a result of the amendments to the Regulation and the Standard Form Agreement.

However, to accord with the amendments to the legislative regime, to account for the feedback that the Law Society received from the OBA, and to recognize that the consumer protection and transparency measures in the Rules do not add value for organizational clients as defined in the Regulation, the proposed amendments at Tabs 2.1.1 and 2.1.2 dispense with the three transparency requirements detailed above in respect of organizational clients.

Licensees representing organizational clients will still be required to consider the factors listed in Rule 3.6-2.1 (1) of the *Rules of Professional Conduct* or Rule 5.01 (8) of the *Paralegal Rules of Conduct* when determining the appropriate percentage or other basis of the contingency fee. Related rules and requirements in respect of fees and disbursements, quality of service, and account billing would also continue to apply.

These recommended amendments are consistent with the initial policy recommendations of the Advertising & Fees Arrangements Issues Working Group, which indicated that the changes to the contingency fee requirements should not apply to:

sophisticated entities, such as large corporations, which are generally able to negotiate the terms of service delivery with licensees, and who may decide to proceed by way of contingency fee but otherwise still would have been able to access legal services.⁶

⁵ See [Rules 3.6-2 – 3.6-2.2](#) of the *Rules of Professional Conduct* and [Rules 5.01 \(7\) – 5.01 \(9\)](#) of the *Paralegal Rules of Conduct*. Under Rule 3.6-2.1 (1) of the *Rules of Professional Conduct* and Rule 5.01 (8) of the *Paralegal Rules of Conduct*, licensees must also consider a number of listed factors when determining the appropriate percentage or other basis of the contingency fee.

⁶ See *Seventh Report of the Advertising & Fee Arrangements Issues Working Group*, report to Convocation, December 1, 2017 at paragraph 35.

Rules of Professional Conduct

Section 3.6 Fees and Disbursements

Reasonable Fees and Disbursements

3.6-1 A lawyer shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

[...]

Contingency Fees and Contingency Fee Agreements

3.6-2 Subject to rule 3.6-1, except in family law, *Criminal Code (Canada)* or any other criminal or quasi-criminal matters, a lawyer may enter into a contingency fee agreement in accordance with the *Solicitors Act* and the regulations made under it.

3.6-2.1 (1) In determining the appropriate percentage or other basis of the contingency fee, the lawyer shall consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The lawyer shall advise the client of these factors.

(2) A lawyer who enters into a contingency fee agreement must meet the following client disclosure requirements:

(a) provide the client with the Law Society's consumer guide titled "Contingency fees: What you need to know," available on the Law Society's website, and a reasonable opportunity to review and consider it before entering into the agreement; and

(b) when billing for the contingency fee, deliver a bill to the client that:

- (i) clearly shows the total amount of the settlement or award and the net amount that the client receives;
- (ii) clearly itemizes and identifies disbursement costs, legal fees and taxes charged to the client;
- (iii) explains the reasonableness of the fee with reference to the following factors:
 - (a) the time expended by the lawyer;
 - (b) the legal complexity of the matter at issue;
 - (c) the results achieved; and
 - (d) the risk assumed by the lawyer, including the risk of non-payment where there is a real risk of an adverse finding on liability in the client's case; and

(iv) states that the client has the right to apply to the Superior Court of Justice for an assessment of the bill in accordance with section 28.1 of the *Solicitors Act 1990* and specifies the latest date for doing so.

(3) The client disclosure requirements of this Rule do not apply to an agreement where ~~a lawyer is retained to represent:~~

~~(a) a lawyer is retained to represent one or more persons in a proceeding commenced under the *Class Proceedings Act, 1992*, as amended; or~~

~~(b) either the client or any person or entity responsible for the payment of the client's legal fees in the matter that is the subject of the agreement is an organization that, together with any affiliates, members of the same joint venture or any other related persons or entities,~~

~~(i) employs more than 25 individuals,~~

~~(ii) employs a lawyer on a full-time basis, or~~

~~(iii) has assets or gross annual revenues that exceed \$10 million.~~

(4) The requirements of Rule (2)(b)(iii) and (iv) do not apply where a court approves the contingency fee.

[Amended - November 2002, October 2004, July 2021, [Insert New Date](#)]

Commentary

[1] A contingency fee under the *Solicitors Act* is one in which any part of the lawyer's compensation is dependent on the successful disposition or completion of the matter for which the lawyer is retained. A contingency fee agreement is a retainer agreement under which payment, including a bonus or premium, depends on a successful disposition or completion of the matter.

[1.1] The *Solicitors Act* and its contingency fee agreements regulation, together with the standard form Contingency Fee Agreement, the lawyer *Rules of Professional Conduct* and the consumer guide titled "Contingency fees: What you need to know," all work in concert to enable the client disclosure requirements in Rule 3.6-2.1. The standard form Contingency Fee Agreement and the consumer guide are both available on the [Law Society's website](#).

[New - October 2002, Amended October 2004, October 2014, July 2021]

[2] [FLSC - not in use]

[3] The client disclosure requirements of this rule are intended to ensure that clients understand contingency fee arrangements, that legal fees are transparent, fair, and reasonable and that potential clients can compare fees when considering whether to retain a lawyer.

[4] When a lawyer enters into a contingency fee agreement and provides advice about settlement, the lawyer should provide the client with a written estimate of the approximate net amount the client is to receive from the settlement. The estimate should include sufficient information for the client to make an informed decision and include a breakdown of the lawyer's fees, disbursements and any other charges to be deducted from the amount the client will receive.

[5] The requirement in Rule 3.6-2.1(2)(b)(iii) that the lawyer explain the reasonableness of the fee is intended to ensure that contingency fees charged are transparent and reasonable. The Ontario Court of Appeal has outlined the test for reasonableness in *Raphael Partners v. Lam* (2002), 61 O.R. (3d) 417, paragraph 50, stating that the factors to consider are:

- (a) the time expended by the lawyer;
- (b) the legal complexity of the matter at issue;
- (c) the results achieved; and
- (d) the risk assumed by the lawyer, including the risk of non-payment where there is a real risk of an adverse finding on liability in the client's case.

The required statement should address each of these factors as they apply to the matter.

[New - July 2021]

3.6-2.2 (1) A lawyer who markets legal services on the basis that clients may be charged fees contingent, in whole or in part, on the successful disposition or completion of a matter must publish a general maximum contingency fee percentage. The disclosure must be by publication on the lawyer's website, or, if the lawyer does not have a website, by providing the maximum percentage to potential clients when they first contact the lawyer.

(2) This Rule does not apply:

(a) in relation to a proceeding commenced pursuant to the *Class Proceedings Act, 1992*;
or

(b) where either the client or any person or entity responsible for the payment of the client's legal fees in the matter that is the subject of the agreement is an organization that, together with any affiliates, members of the same joint venture or any other related persons or entities,

(i) employs more than 25 individuals,

(ii) employs a lawyer on a full-time basis, or

(iii) has assets or gross annual revenues that exceed \$10 million.

[New – July 2021, Insert New Date]

Commentary

[1] The maximum contingency fee percentages published on the lawyer’s website should be easily accessible.

[2] A lawyer may enter into an agreement under which the contingent fee rate is higher than their published maximum rate. However, the lawyer must

(a) disclose to the client that the percentage fee exceeds the lawyer’s disclosed maximum contingency fee rate; and

(b) afterwards publish the higher rate as the lawyer’s maximum rate.

[3] Unless a lawyer markets legal services on a contingency fee basis exclusively in relation to proceedings commenced pursuant to the *Class Proceedings Act, 1992* or to organizational clients as defined in Rule 3.6-2.2(2), the lawyer must still comply with the marketing requirements in Rule 3.6-2.2(1).

[New Insert New Date]

Transitional Requirements

3.6-2.3 Rules 3.6-2.1 and 3.6-2.2 do not apply to contingency fee agreements entered into before July 1, 2021.A

Code de déontologie

Article 3.6 Les honoraires et les débours

Honoraires et débours raisonnables

3.6-1 L'avocat ne doit pas demander ni accepter des honoraires et des débours qui ne sont ni justes ni raisonnables et qui n'ont pas été divulgués en temps utile.

[...]

Honoraires conditionnels et ententes sur des honoraires conditionnels

3.6-2 Sous réserve de la règle 3.6-1, sauf dans des affaires relevant du droit de la famille ou du Code criminel (Canada), ou dans toute autre affaire criminelle ou quasi criminelle, l'avocat peut conclure une entente écrite sur des honoraires conditionnels conforme à la Loi sur les procureurs et aux règlements pris en application de la loi.

3.6-2.1 (1) Dans l'évaluation du pourcentage approprié ou de tout autre taux du calcul des honoraires conditionnels, l'avocat doit examiner un certain nombre de facteurs, y compris les chances de succès, la nature et la complexité de la réclamation, le cout et les risques liés à celle-ci, le montant des dommages-intérêts prévus et la personne à qui seront adjugés les dépens. L'avocat doit informer le client de ces facteurs.

(2) L'avocat qui conclut une entente sur des honoraires conditionnels doit satisfaire aux exigences suivantes relatives à l'information à fournir aux clients :

a) remettre au client le guide du Barreau intitulé Honoraires conditionnels : ce que vous devez savoir, qui se trouve sur le site Web du Barreau, et lui donner un délai raisonnable pour le consulter avant de conclure une entente sur des honoraires conditionnels ;

b) lors de la facturation des honoraires conditionnels, remettre une facture au client qui :
(i) indique clairement le montant total du règlement ou des indemnités et le montant net que le client recevra ;

(ii) indique clairement et en détail le cout des débours, les honoraires juridiques et les taxes imputés au client ;

(iii) explique le caractère raisonnable des honoraires par rapport aux facteurs suivants :

a) le temps consacré au dossier par l'avocat ;

b) la complexité juridique de l'affaire en cause ;

c) les résultats obtenus ;

d) le risque assumé par l'avocat, notamment le risque de non-paiement s'il y a une

possibilité réelle de décision défavorable sur la question de la responsabilité dans la cause du client.

(iv) contient une déclaration indiquant que le client a le droit de demander à la Cour supérieure de justice la liquidation du mémoire en application de l'article 28.1 de la Loi sur les procureurs, et donne la date d'échéance pour faire une telle demande.

(3) Les exigences relatives à l'information à fournir aux clients prévues dans la présente règle ne s'appliquent pas à une entente en vertu de laquelle ~~les services d'un avocat sont retenus pour représenter:~~

a) les services d'un avocat sont retenus pour représenter au moins une personne dans une instance introduite aux termes de la *Loi de 1992 sur les recours collectifs*;

b) le client ou toute personne ou entité redevable du paiement des honoraires demandés au client dans l'affaire qui fait l'objet de l'entente, est une organisation qui, avec tout membre du même groupe, tout membre de la même coentreprise ou toute autre personne ou entité liée, satisfait à l'une ou l'autre des conditions suivantes :

(i) elle emploie plus de 25 particuliers ;

(ii) elle emploie un avocat à temps plein ;

(iii) elle a des actifs ou des recettes brutes annuelles de plus de 10 millions de dollars.

(4) Les exigences prévues aux alinéas (2) b) (iii) et (iv) de la règle ne s'appliquent pas si un tribunal a approuvé les honoraires conditionnels.

[Modifié – novembre 2002, octobre 2004, juillet 2021, Insert New Date]

Commentaire

[1] Dans la *Loi sur les procureurs*, les honoraires conditionnels visent la rémunération versée à l'avocat pour des services juridiques qui sont subordonnés, en tout ou en partie, à une décision favorable concernant l'affaire à l'égard de laquelle les services ont été rendus ou au règlement favorable de celle-ci. Une entente sur des honoraires conditionnels est une convention de mandat en vertu de laquelle le paiement, notamment une prime, est subordonné à une décision favorable concernant l'affaire ou au règlement favorable de celle-ci.

[1.1] La *Loi sur les procureurs* et ses règlements sur les honoraires conditionnels, avec l'entente type sur des honoraires conditionnels, le *Code de déontologie* et le guide du

consommateur intitulé *Honoraires conditionnels : ce que vous devez savoir*, permettent ensemble l'application des exigences relatives à la divulgation des renseignements de clients de la règle 3.6-2.1. L'entente type sur des honoraires conditionnels et le guide du consommateur se trouvent tous deux sur le [site Web du Barreau](#).

[Nouveau – octobre 2002, modifié octobre 2004, octobre 2014, juillet 2021]

[2] [FOPJC – Paragraphe non utilisé]

[3] Les exigences relatives à la divulgation des renseignements de clients prévues dans la présente règle visent à assurer que les clients comprennent les ententes sur des honoraires conditionnels, que les honoraires juridiques sont transparents, justes et raisonnables et que les clients éventuels peuvent comparer les honoraires au moment de choisir leur avocat.

[4] Quand un avocat conclut une entente sur des honoraires conditionnels et fournit des conseils sur un règlement, l'avocat devrait fournir au client une estimation par écrit du montant net approximatif que le client peut s'attendre à recevoir. Cette estimation devrait comprendre assez de renseignements pour que le client puisse prendre une décision éclairée, et comprendre une ventilation des honoraires, débours et toute autre charge que l'avocat déduira du montant que le client recevra.

[5] L'exigence établie dans l'alinéa 3.6-2.1 (2) b) (iii) de la règle voulant que l'avocat explique le caractère raisonnable des honoraires vise à assurer que les honoraires conditionnels sont transparents et raisonnables. La Cour d'appel de l'Ontario a défini le critère de caractère raisonnable dans la décision [Raphael Partners c. Lam \(2002\), 61 O.R. \(3d\) 417](#) au paragraphe 50 en décrivant les facteurs suivants à prendre en compte :

- a) le temps consacré au dossier par l'avocat ;
- b) la complexité juridique de l'affaire en cause ;
- c) les résultats obtenus ;
- d) le risque assumé par l'avocat, notamment le risque de non-paiement s'il y a une possibilité réelle de décision défavorable sur la question de la responsabilité dans la cause du client.

La déclaration requise devrait porter sur chacun de ces facteurs dans la mesure où ils s'appliquent à l'affaire.

[Nouveau – juillet 2021]

3.6-2.2 (1) L'avocat qui annonce ses services juridiques avec l'idée de facturer à ses clients des honoraires conditionnels subordonnés, en tout ou en partie, à une décision favorable concernant l'affaire ou au règlement favorable de celle-ci doit publier le pourcentage maximum d'honoraires conditionnels. Cette divulgation doit être publiée sur le site Web de

l'avocat, ou si l'avocat n'a pas de site Web, en fournissant le pourcentage maximum aux clients éventuels lors du premier contact.

(2) La présente règle ne s'applique pas :

a) aux instances introduites aux termes de la *Loi de 1992 sur les recours collectifs*;

b) au client ni à toute personne ou entité redevable du paiement des honoraires demandés au client dans l'affaire qui fait l'objet de l'entente, est une organisation qui, avec tout membre du même groupe, tout membre de la même coentreprise ou toute autre personne ou entité liée, satisfait à l'une ou l'autre des conditions suivantes :

(i) elle emploie plus de 25 particuliers ;

(ii) elle emploie un avocat à temps plein ;

(iii) elle a des actifs ou des recettes brutes annuelles de plus de 10 millions de dollars.

[Nouveau – juillet 2021, Insert New Date]

Commentaire

[1] Les pourcentages maximums d'honoraires conditionnels publiés sur le site Web de l'avocat devraient être faciles d'accès.

[2] L'avocat peut conclure une entente dans laquelle le taux des honoraires conditionnels est supérieur à ses taux maximums publiés. Cependant, l'avocat doit

a) divulguer au client que le pourcentage dépasse le taux d'honoraires conditionnels maximums divulgué ;

b) par la suite, publier le taux le plus élevé comme taux maximum.

[3] À moins qu'un avocat n'annonce ses services juridiques moyennant des honoraires conditionnels exclusivement dans le cadre d'instances introduites aux termes de la *Loi de 1992 sur les recours collectifs* ou auprès de clients qui sont des organisations, au sens attribué à cette expression dans la règle 3.6-2.2 (2), il doit toujours se conformer aux exigences de marketing de la règle 3.6-2.2 (1).

[Nouveau – Insert New Date]

Exigences de transition

3.6-2.3 Les dispositions des règles 3.6-2.1 et 3.6-2.2 ne s'appliquent pas aux ententes sur des honoraires conditionnels conclues avant le 1^{er} juillet 2021.

Paralegal Rules of Conduct

Rule 5 Fees and Retainers

5.01 FEES AND RETAINERS

Reasonable Fees and Disbursements

5.01 (1) A paralegal shall not charge or accept any amount for a fee or disbursement unless it is fair and reasonable and has been disclosed in a timely fashion.

[. . .]

Contingency Fees

(7) Except in *Criminal Code (Canada)* or any other criminal or quasi-criminal matters, a paralegal may enter into a contingency fee agreement in accordance with the *Solicitors Act* and the regulations made under it.

(8) In determining the appropriate percentage or other basis of the contingency fee, the paralegal shall consider a number of factors, including the likelihood of success, the nature and complexity of the claim, the expense and risk of pursuing it, the amount of the expected recovery and who is to receive an award of costs. The paralegal shall advise the client of these factors.

(8.1) A paralegal who enters into a contingency fee agreement must meet the following client disclosure requirements:

(a) provide the client with the Law Society's consumer guide titled "Contingency fees: What you need to know," available on the Law Society's website, and a reasonable opportunity to review and consider it before entering into the agreement; and

(b) when billing for the contingency fee, deliver a bill to the client that:

(i) clearly shows the total amount of the settlement or award and the net amount that the client receives;

(ii) clearly itemizes and identifies disbursement costs, legal fees and taxes charged to the client;

(iii) explains the reasonableness of the fee with reference to the following factors:

(a) the time expended by the paralegal;

(b) the legal complexity of the matter at issue;

(c) the results achieved; and

(d) the risk assumed by the paralegal, including the risk of non-payment where there is a real risk of an adverse finding on liability in the client's case; and

(iv) states that the client has the right to apply to the Superior Court of Justice for

an assessment of the bill in accordance with section 28.1 of the *Solicitors Act 1990* and specifies the latest date for doing so.

(8.2) The requirements of subrule (8.1)(b)(iii) and (iv) do not apply where a court approves the contingency fee.

(9) A paralegal who markets legal services on the basis that clients may be charged fees contingent, in whole or in part, on the successful disposition or completion of a matter must publish a general maximum contingency fee percentage. The disclosure must be by publication on the paralegal's website, or, if the paralegal does not have a website, by providing the maximum percentage to potential clients when they first contact the paralegal.

(9.1) The client disclosure requirements of subrule 8.1 and the marketing requirements of subrule 9 do not apply where either the client or any person or entity responsible for the payment of the client's legal fees in the matter that is the subject of the agreement, is an organization that, together with any affiliates, members of the same joint venture or any other related persons or entities,

(i) employs more than 25 individuals,

(ii) employs a lawyer on a full-time basis, or

(iii) has assets or gross annual revenues that exceed \$10 million

[New Insert New Date]

Transitional Requirements

(9.12) Subrules (8), (8.1), (8.2) and (9) do not apply to contingency fee agreements entered into before July 1, 2021.

[...]

Code de déontologie des parajuristes

Règle 5 Les honoraires et les mandats

5.01 LES HONORAIRES ET LES MANDATS

Honoraires et débours raisonnables

5.01 (1) Le ou la parajuriste ne doit pas demander ni accepter des honoraires et des débours qui ne sont ni justes ni raisonnables et qui n'ont pas été divulgués en temps utile.

[. . .]

Honoraires conditionnels

(7) Sauf dans des affaires relevant du *Code criminel* (Canada) ou dans toute autre affaire criminelle ou quasi criminelle, le parajuriste peut conclure une entente sur des honoraires conditionnels conforme à la *Loi sur les procureurs* et aux règlements pris en application de la loi.

(8) Dans l'évaluation du pourcentage approprié ou de tout autre taux du calcul des honoraires conditionnels, le parajuriste doit examiner un certain nombre de facteurs, y compris les chances de succès, la nature et la complexité de la réclamation, le cout et les risques reliés à celle-ci, le montant des dommages-intérêts prévus et la personne à qui seront adjugés les dépens. Le parajuriste doit informer le client de ces facteurs.

(8.1) Le parajuriste qui conclut une entente sur des honoraires conditionnels doit satisfaire aux exigences suivantes relatives à **l'information à fournir aux clients** :

a) remettre au client le guide du Barreau intitulé Honoraires conditionnels : ce que vous devez savoir, qui se trouve sur le site Web du Barreau, et lui donner un délai raisonnable pour le consulter avant de conclure une entente sur des honoraires conditionnels ;

b) lors de la facturation des honoraires conditionnels, remettre une facture au client qui :

(i) indique clairement le montant total du règlement ou des indemnités et le montant net que le client recevra ;

(ii) indique clairement et en détail le cout des débours, les honoraires juridiques et les taxes imputés au client ;

(iii) explique le caractère raisonnable des honoraires en décrivant les facteurs suivants à prendre en compte :

a) le temps consacré au dossier par le parajuriste ;

b) la complexité juridique de l'affaire en cause ;

c) les résultats obtenus ;

d) le risque assumé par le parajuriste, notamment le risque de non-paiement

s'il y a une possibilité réelle de décision défavorable sur la question de la responsabilité dans la cause du client ;

(iv) indique que le client a le droit de demander à la Cour supérieure de justice la liquidation du mémoire en application de l'article 28.1 de la *Loi de 1990 sur les procureurs*, et donne la date d'échéance pour faire une telle demande.

(8.2) Les exigences prévues aux alinéas (8.1) b) (iii) et (iv) ne s'appliquent pas si un tribunal a approuvé les honoraires conditionnels.

(9) Le parajuriste qui annonce ses services juridiques avec l'idée de facturer à ses clients des honoraires conditionnels subordonnés, en tout ou en partie, à une décision favorable concernant l'affaire ou au règlement favorable de celle-ci doit publier le pourcentage maximum sur les honoraires conditionnels. Cette divulgation doit être publiée sur le site Web du parajuriste, ou si le parajuriste n'a pas de site Web, en fournissant le pourcentage maximum aux clients éventuels lors du premier contact.

(9.1) Les exigences relatives à l'information à fournir aux clients de la règle 8.1 et les exigences de marketing de la règle 9 ne s'appliquent pas si le client ou toute personne ou entité redevable du paiement des honoraires demandés au client dans l'affaire qui fait l'objet de l'entente, est une organisation qui, avec tout membre du même groupe, tout membre de la même coentreprise ou toute autre personne ou entité liée, satisfait à l'une ou l'autre des conditions suivantes :

_____ (i) elle emploie plus de 25 particuliers ;

_____ (ii) emploie un avocat à temps plein ;

_____ (iii) elle a des actifs ou des recettes brutes annuelles de plus de 10 millions de dollars.

[Nouveau - Insert New Date]

Exigences de transition

(9.12) Les dispositions des règles (8), (8.1), (8.2) et (9) ne s'appliquent pas aux ententes sur des honoraires conditionnels conclues avant le 1^{er} juillet 2021.

[...]

Paralegal Professional Conduct Guidelines

Contingency Fees

Rule Reference: Rule 5.01(7) – (9.1)

23. A **contingency fee** is a fee that is paid if and when a particular result is achieved in a client's matter.

[...]

29 Unless a paralegal markets legal services on a contingency fee basis exclusively to organizational clients as defined in subrule 5.01(9.1), the paralegal must still comply with the marketing requirements in subrule 5.01(9).

~~29.~~ 30 A paralegal may enter into an agreement under which the contingent fee rate is higher than their published maximum rate. However, the paralegal must (a) disclose to the client that the percentage fee exceeds the paralegal's disclosed maximum contingency fee rate; and (b) afterwards publish the higher rate as the paralegal's maximum rate.

Lignes directrices - Code de déontologie des parajuristes

Honoraires conditionnels

Règles 5.01(7) – (9.1)

23. Les ***honoraires conditionnels*** sont des honoraires payés dans l'éventualité où un résultat particulier est obtenu dans une affaire.

[...]

29. À moins qu'un parajuriste n'annonce ses services juridiques moyennant des honoraires conditionnels exclusivement auprès de clients qui sont des organisations, au sens attribué à cette expression dans la règle 5.01 (9.1), il doit toujours se conformer aux exigences de marketing de la règle 5.01 (9).

~~29.~~ 30. Le parajuriste peut conclure une entente dans laquelle le taux des honoraires conditionnels est supérieur à ses taux maximums publiés. Cependant, le parajuriste doit :

- a) divulguer au client le pourcentage et lui indiquer qu'il dépasse le taux d'honoraires conditionnels maximums divulgué ;
- b) par la suite, publier le taux le plus élevé comme taux maximum.