

Non-Standard Form Contingency Fee Agreement Checklist

Lawyer/Paralegal:

Client Name:

Client Matter No.:

This Checklist is designed for use by lawyers and paralegals. Prior to using this Checklist, you should review the [Instructions for Contingency Fee Checklists](#). These Instructions outline the circumstances in which this Checklist applies and the way in which you should use it. The Instructions also direct you to the applicable rules of conduct, legislative authorities, and other related resources. You should refer to these requirements and supports to determine the full extent of your legal obligations and professional responsibilities with respect to contingency fees.

You should only use this Checklist for Non-Standard Form Contingency Fee Agreements (“Non-Standard Form CFA”) entered into on or after July 1, 2021.

At the outset of the matter

1. Review or confirm that you are familiar with the requirements for contingency fees

I have reviewed or am familiar with

- Sections 3.6 and 4.2 of the [Rules of Professional Conduct](#) or Rules 5.01 and 8.03 of the [Paralegal Rules of Conduct](#) and Guideline 13: Fees of the [Paralegal Professional Conduct Guidelines](#).
- [Solicitors Act](#)
- [O. Reg. 563/20, Contingency Fee Agreements](#) (“O. Reg. 563/20”)

Lawyers and paralegals may also wish to review the [Law Society’s Frequently Asked Questions about Contingency Fees](#).

2. Ensure you are permitted to enter into a contingency fee agreement for this matter

I am a **lawyer** and

- not** representing the client in a family law, *Criminal Code (Canada)*, or any other criminal or quasi-criminal matter

or

I am a **paralegal** and

- the matter is within my permitted scope of practice as defined in section 6 of [By-Law 4](#), and
- it is **not** a *Criminal Code (Canada)* or any other criminal or quasi-criminal matter.

Note: If you cannot meet these conditions, you are **not** permitted to enter into a contingency fee agreement for this matter and should **not** use this Checklist.

3. Confirm that you may use your own form of contingency fee agreement (Non-Standard Form CFA) for this matter

I am permitted to use my own form of contingency fee agreement because in this matter

- I represent a client that is a business that
 - employs more than 25 individuals, or
 - employs, as a legal advisor on a full-time basis, one or more persons authorized under the [Law Society Act](#) to practice law in Ontario, or
 - has gross annual revenues exceeding \$10 million.
- The court has approved the contingency fee agreement, or the fee set out in the agreement
- I have indicated in the Notes section of this Checklist the date(s) upon which court approval was sought and obtained.

Note: If neither of these situations apply, you must use the Standard Form Contingency Fee Agreement. You should **stop completing this checklist** and should instead review and **complete the** [Standard Form Contingency Fee Agreement Checklist](#).

4. Ensure compliance with the marketing disclosure requirements, if applicable

- I do **not** market my services on the basis that clients may be charged a contingency fee (if selected, proceed to next question)

or

- I market my services on the basis that clients may be charged a contingency fee, and
 - I have disclosed to the client
 - The maximum contingency fee percentage that I charge either by
 - Posting it on my firm website, or
 - Providing this information to the client when they first contact me because I do not have a website, and either
 - I am not charging a contingency fee percentage that is more than my published general maximum contingency fee rate, or
 - I am charging a contingency fee percentage that was more than my published general maximum contingency fee rate, and
 - I have now published the higher rate on my firm website as my maximum rate or will advise clients of this higher rate going forward

Responsible Lawyer/Paralegal:

Date:

Prior to entering into a contingency fee agreement

5. Prepare a Non-Standard Form Contingency Fee Agreement that complies with the [Solicitors Act](#) and [O. Reg. 563/20](#)

Select either Option 1 or 2:

- Option 1: My client is a business as defined in section 7(3) of [O. Reg. 563/20](#)** (see question #3 above)

My contingency fee agreement with the business client

- Is in writing
- Includes the following provisions:
 - How the contingency fee is calculated.** I have set out the method by which the contingency fee will be determined and included a statement that I will not recover more in fees under the agreement than the amount recovered by the client under an award or settlement, including any costs but excluding any disbursements or taxes.
 - How disbursements will be paid.** I have informed the client that if I pay for disbursements or taxes on behalf of the client, I am entitled to be reimbursed for those payments (subject to s. 47 of the [Legal Aid Services Act, 1998](#)) as a first charge on any amount recovered under an award or settlement of the matter.
 - An explanation of costs.** I have explained costs and the awarding of costs to the client, including that if the client is found liable to pay costs, the client is responsible for paying any costs contribution or award, on a partial indemnity or substantial indemnity basis.
 - The client's right to review your bill.** I have advised the client of their right to ask the Superior Court of Justice to assess my bill and identify the timelines for asking for the assessment (see section 5 and 28.1(11)(a) of the [Solicitors Act](#)).
 - How to end the agreement.** I have indicated when and how the client or I may terminate the agreement, including the consequences of the termination for each of us and the manner in which my fee is to be determined in the event of termination.
 - The client is the critical decision maker.** I have included a statement that the client retains the right to make all critical decisions regarding the conduct of the matter.
- Includes any other relevant particulars specific to the client or the client matter, for example, provisions that
 - Identify the legal services covered and not covered by the agreement
 - Address conflicts of interest and confidentiality obligations
 - Inform the client of their obligation under section 3 of [O. Reg. 563/20](#) to direct that all legal fees billed by you are to be paid out of the award or settlement
- Does **not** include provisions that
 - Require my consent before a claim may be abandoned, discontinued, or settled at the instructions of the client

- Prevent the client from terminating the agreement with me or changing representation
- Permit me to split their fee with any other person, except as provided by the [Rules](#) or [Paralegal Rules](#)

or

Option 2: The court has approved the contingency fee agreement

- I prepared my own form of contingency fee agreement
- I have sought and received the court’s approval of the contingency fee agreement
 - I have indicated in the Notes section of this Checklist the date(s) upon which court approval was sought and obtained

6. Comply with the client disclosure requirements

I have

- Provided the client with the consumer guide titled [Contingency fees: What you need to know](#) (“Consumer Guide”)
- Ensured that the client had a reasonable opportunity to review and consider the Consumer Guide
- Obtained court approval of the contingency fee **or** advised the client about the factors that I took into consideration when determining the appropriate percentage or other basis of the contingency fee, 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
 - Who is to receive an award of costs

Note: If you have obtained court approval of the contingency fee, you should indicate in the Notes section of this Checklist the date(s) upon which court approval was sought and obtained.

Responsible Lawyer/Paralegal:

Date:

At the time of entering into the contingency fee agreement

7. Administer the Non-Standard Form CFA in accordance with the [Solicitors Act](#), [O. Reg. 563/20](#), the [Rules](#) or the [Paralegal Rules](#), and best practices

I have

- Reviewed the Non-Standard Form CFA with my client, discussing any particulars added specifically for the client or client matter
- Asked my client if they have any questions related to the contingency fee, the Non-Standard Form CFA, or the Consumer Guide

- Answered all my client's questions
- Confirmed my client's understanding of their rights and obligations under the Non-Standard Form CFA
- Considered requesting that the client initial the Consumer Guide to confirm that the client received and reviewed it
- Signed and required my client to sign the agreement
- Provided my client with a fully signed copy of the agreement
- Applied to have the court approve the contingency fee if my client is a person under a disability represented by a litigation guardian or if the contingency fee agreement does not comply with [O. Reg. 563/20](#)
- Retained for my records:
 - A fully signed copy of the agreement, and
 - The court's approval of the agreement, if required

Responsible Lawyer/Paralegal:

Date:

During representation under the contingency fee agreement

8. Comply with the obligation to provide a written settlement breakdown to the client if advice was provided about settlement

- I have disclosed in writing an estimate of the approximate net amount the client is to receive from the settlement, including a breakdown of
 - Legal fees
 - Disbursements, and
 - Any other charges to be deducted from the amount the client will receive, or
- No advice was provided about settlement

Responsible Lawyer/Paralegal:

Date:

Upon completion of the contingency fee agreement

9. Deliver a bill to the client that includes the required fee-related disclosures

The bill I delivered to the client included

- The total amount of the settlement or award
- The net amount that the client receives
- An itemized list identifying disbursement costs, legal fees, and taxes charged to the client

- Unless the court has approved the contingency fee, an explanation of the reasonableness of the fee with reference to the following:
 - The time the lawyer or paralegal expended
 - The legal complexity of the matter at issue
 - The results achieved
 - The risk I assumed including the risk of non-payment where there is a real risk of an adverse finding on liability in the client's case
- A statement that the client has a 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](#) and specifies the latest date for doing so

Responsible Lawyer/Paralegal:

Date:

Notes: