



TAB 7

Report to Convocation February 22, 2018

Professional Regulation Committee

Committee Members

William C. McDowell (Chair)
Malcolm Mercer (Vice-Chair)
Jonathan Rosenthal (Vice-Chair)
Fred Bickford
John Callaghan
Gisèle Chrétien
Suzanne Clément
Seymour Epstein
David Howell
Carol Hartman
Michael Lerner
Brian Lawrie
Virginia MacLean
Susan Richer
Raj Sharda
Jerry Udell

Purpose of Report: Information

**Prepared by the Professional Regulation Division
Matthew Wylie (416-947-3953)**

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2017 Complaints Resolution Commissioner Annual Report.....[Tab 7.2](#)

COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on February 8, 2018. In attendance were William C. McDowell (Chair), Jonathan Rosenthal (Vice-Chair) (by telephone), Fred Bickford, Seymour Epstein, Carol Hartman (by telephone), David Howell, Michael Lerner, Brian Lawrie, Virginia MacLean (by telephone), Susan Richer, and Jerry Udell.
2. Bencher Heather Zordel also attended the meeting.
3. The Complaints Resolution Commissioner (CRC) (Bernard Morrow) attended the meeting, as did Miriam Weinfeld and Lisa Steinberg of Mr. Morrow’s office to discuss the 2017 CRC Annual Report.
4. Law Society staff members Diana Miles and Matthew Wylie were also in attendance.

FOR INFORMATION

**EIGHTH REPORT OF THE ADVERTISING & FEE
ARRANGEMENTS ISSUES WORKING GROUP****SUMMARY OF THE ISSUE UNDER CONSIDERATION**

5. In this eighth report to Convocation, the Working Group¹ reports that it is commencing a Call for Comment as part of the Law Society's process to implement Convocation's recommended changes to the regulation of contingency fees.

BACKGROUND

6. In December 2017, Convocation approved the Working Group's plan to regulate contingency fees, and in January 2018 Convocation approved additional reforms recommended by the Working Group.²
7. The adopted transparency and disclosure reforms include:
- a. The introduction of a mandatory standard contingency fee agreement;
 - b. The introduction of a 'Know Your Rights' guide for the public;
 - c. New disclosure requirements to provide clients with enhanced transparency and reinforce client rights;
 - d. A requirement for legal professionals to publicly disclose the maximum contingency fee percentages they charge by practice area; and

¹ The Advertising & Fee Arrangements Issues Working Group is providing this interim report on its work. Since it was established in February 2016, the Working Group has been studying current advertising, referral fee and contingency fee practices in a range of practice settings, including real estate, personal injury, criminal law and paralegal practices, to determine whether any regulatory responses are required with respect to them. The history of the Working Group can be found on the Law Society's website at <https://www.lsuc.on.ca/advertising-fee-arrangements/>. The Working Group is chaired by Malcolm Mercer. Working Group members include Jack Braithwaite, Paul Cooper, Jacqueline Horvat, Michael Lerner, Marian Lippa, Virginia Maclean, Jan Richardson, Jonathan Rosenthal, Andrew Spurgeon and Jerry Udell. Benchers Robert Burd and Carol Hartman served on the Working Group until August, 2016.

² Seventh Report of the Advertising & Fee Arrangements Issues Working Group, December 2017, online at: <http://www.lsuc.on.ca/uploadedFiles/Advertising-Fees-Arrangements-Issues-WG-Report-Nov-2017.pdf> ("Seventh Report"); Revised Supplementary Report to the Seventh Report of the Advertising & Fee Arrangements Issues Working Group, January 2018, online at: [http://www.lsuc.on.ca/uploadedFiles/For the Public/About the Law Society/Convocation Decisions/2018/Convocation-Jan-2018-Professional-Regulation-Committee-Report.pdf](http://www.lsuc.on.ca/uploadedFiles/For%20the%20Public/About%20the%20Law%20Society/Convocation%20Decisions/2018/Convocation-Jan-2018-Professional-Regulation-Committee-Report.pdf) ("Revised Supplementary Report").

- e. New requirements for lawyers and paralegals to report information on their annual reports with respect to contingency fees charged. This information will be published by the Law Society in aggregate form.³
8. The Law Society has also recommended changes to the *Solicitors Act* and its regulations to enhance transparency, change how contingency fees are calculated, and regulate contingency fees for paralegals in the same way as for lawyers.⁴ In addition, Convocation has adopted enhanced transparency measures regarding disbursements which may be charged pursuant to the mandatory standard form contingency fee agreement.⁵
9. Convocation's recommended contingency fee reforms are intended to apply to both full contingency fees and partial contingency fees.⁶ They are intended to apply to individuals and small businesses, but are not intended to apply in the class action context, where the client is a sophisticated entity or where the court has approved the contingency fee agreement.

DISCUSSION

10. Today (February 22, 2018), the Working Group is launching a Call for Comment on the documents that will be used in implementing Convocation's approved contingency fee reforms, and documents that would be used to implement both Convocation's approved contingency fee reforms and the requested amendments to the *Solicitors Act* and its regulations. The Call for Comment materials are attached at Tab 7.1.1, and include:
 - a. The Call for Comment document;
 - b. Two draft Mandatory Standard Contingency Fee Agreements, one based on current legislative requirements and new Law Society requirements and one based on the proposed amendments and the Law Society's new requirements,
 - c. Two draft Know Your Rights guides, one based on current legislative requirements and new Law Society requirements and one based on the proposed amendments and the Law Society's new requirements ; and
 - d. Draft rule amendments (to the Lawyer Rules of Professional Conduct and the Paralegal Rules of Conduct and Paralegal Professional Conduct Guidelines).

³ Seventh Report at para. 13.

⁴ *Ibid.*

⁵ Revised Supplementary Report at paras 3b and 3e.

⁶ Revised Supplementary Report at para 3a; Seventh Report at para. 13.

NEXT STEPS

11. The Call for Comment period will be open from February 22 to March 20, 2018.
12. The Law Society continues to communicate with the provincial government, and the scope of reforms and in force date will be determined in part on the outcome of discussions with the government.
13. The Working Group will return to Convocation in the spring with its final recommendations, following consideration of the comments received on these materials.
14. As previously reported, the Working Group also continues to explore issues regarding lawyers receiving compensation or other benefits and related practices with respect to title insurance and other services. The Working Group will be reporting to Convocation regarding this issue in the coming months.



Law Society
of Ontario | Barreau
de l'Ontario



Advertising & Fee Arrangements Issues Working Group

Contingency Fee Reforms Consultation Document

Winter 2018

Call for Comment: Contingency Fee Reforms

The Law Society is moving forward with its plans to reform the regulation of contingency fees. The reforms protect access to justice for the public while safeguarding against unscrupulous practices and unreasonable fees.

The Advertising and Fee Arrangements Issues Working Group would like to hear from lawyers, paralegals and the public on its proposed:

1. Mandatory Standard Contingency Fee Agreement

There are two versions of this document. **One** is based on current legislative requirements and new Law Society requirements. **One** is based on proposed amendments to the *Solicitors Act* and its regulation, and the Law Society's new requirements, which would require legislative amendment before implementation.

2. Know Your Rights Guide for the Public

There are two versions of this document. **One** is based on current legislative requirements and new Law Society requirements. **One** is based on proposed amendments to the *Solicitors Act* and its regulation, and the Law Society's new requirements, which would require legislative amendment before implementation.

3. Rule amendments regarding

- Providing the client with a written estimate of the approximate net amount to be received by the client when providing advice about settlement;
- Disclosure requirements when the contingency fee is ultimately charged, to provide the consumer with the following:
 - a clear breakdown of the final settlement or award, the net amount going to the client, disbursements costs, legal fees and taxes;
 - a statement explaining the reasonableness of the fee in light of factors such as legal complexity, the results achieved and the risk assumed, including the risk that the matter would not have been successful; and
 - a statement that the client has the right to assess the account.
- A requirement for legal professionals to publicly disclose the maximum contingency fee percentage they charge by practice area, allowing increased transparency, and the ability for individuals to shop around for representation; and

- New reporting information required on lawyers' and paralegals' annual reports to the Law Society. Aggregate data will be shared with the public and policy makers to better inform future consumer choice and policy decisions.

Please see below for drafts of these materials. Additional information may be found at iso.ca/advertising-fee-arrangements.

Convocation approved the Working Group's [plan to regulate contingency fees](#), **in principle**, at its meeting in December 2017 and approved [additional reforms](#) at its January 2018 meeting.

The Working Group will return to Convocation in the spring with its final recommendations, following its consideration of the comments received on these materials. The implementation date will be determined following communication with the provincial government.

Comments may be submitted by March 20, 2018 at:

iso.ca/advertising-fee-arrangements

Submissions will be provided to the Working Group. They may also be provided to the Law Society's Professional Regulation Committee and Convocation, and may be reproduced, and/or made publicly available by the Law Society with attribution. The Law Society reserves the right to redact submissions at its discretion, for reasons including the protection of confidentiality, copyright, and brevity.

Background

The Advertising and Fee Issues Working Group has been considering contingency fees, together with related advertising and referral fee issues since February 2016.

The Working Group recognizes the important role contingency fees play in providing access to justice. However, it received a great deal of information about contingency fee arrangements that led it to propose changes to the regulation of contingency fee arrangements in order to protect consumers.

For a detailed overview of the Law Society's Advertising and Fee Arrangements Issues Working Group consideration of the current operation of contingency fee arrangements, and the rationale for the Working Group's consideration of the above potential recommendations, including prior reports to Convocation, please visit iso.ca/advertising-fee-arrangements.

Advertising and Fee Arrangements Issues Working Group

Malcolm Mercer (Chair)
Jack Braithwaite
Paul Cooper
Jacqueline Horvat
Michael Lerner
Marian Lippa
Virginia MacLean
Jan Richardson
Jonathan Rosenthal
Andrew Spurgeon
Jerry Udell

Mandatory Standard Contingency Fee Agreement (Based on Law Society Recommendations and Current Legislation)

Law Society of Ontario Call for Comment
Draft Standard Form Contingency Fee Retainer Agreement
Current legislation and new Law Society requirements

Contingency Fee Retainer Agreement

[Firm Name, Address, Telephone Number, Email]

[Date]

[Client Name(s)]
[Client Address(es)]

Re: [Insert general description of matter]

PART 1. KNOW YOUR RIGHTS

Before signing this agreement, you should carefully read the Know Your Rights document provided. You should then carefully read this agreement.

PART 2. OUR SERVICES

Legal Services Covered by This Agreement

You retain us to represent you to **[Describe the nature of the matter and the precise scope of the retainer]**. You retain us to represent you through to settlement or through to the end of trial **[If the retainer includes appeals add: and on appeal should there be an appeal.]**

Legal services not covered by this Agreement

[You have not retained us to [where appropriate, specify matters excluded from the retainer.]
[We have recommended that you [where appropriate, indicate that you have recommended that someone else be retained or that the client further consider the exclusion keeping in mind limitation periods.]

[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 of [describe cause of action] / may have a claim [in tort / for motor vehicle accident benefits / long term disability / CPP-disability etc.] you have not asked us to take any legal action concerning this.]

[If there is more than one client, include:]

Representing Multiple Clients

We are being retained to represent the following people: *[names of clients]*. No information received from any one of you in connection with this matter can be treated as confidential from the others. If we should receive information in connection to the matter from one of you which we are instructed to keep confidential from others of you, we may have to stop acting for some or all of you.

Law Society of Ontario Call for Comment
Draft Standard Form Contingency Fee Retainer Agreement
Current legislation and new Law Society requirements

After discussion with you, we have concluded that, at least at present, each of your individual interests in this matter are the same or sufficiently similar. If a conflict later develops that cannot be resolved, we cannot continue to act for both or all of you.

[Include 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 we will refer you to another lawyer or paralegal.]

[Include if applicable: We confirm that you are aware that we act regularly and have a continuing relationship with _____ and that we have recommended that you obtain independent legal advice about the joint retainer prior to retaining us.]

PART 3. YOUR OPTIONS WITH RESPECT TO FEE ARRANGEMENTS

As we have explained, there are different ways a **[lawyer /paralegal]** can charge their fees for services rendered, for example:

- charging an hourly fee for work done
- charging a fixed fee for work done
- charging a contingency fee, calculated as a fixed percentage of the amount of money awarded in a settlement or judgment in the event that money is recovered on your behalf, with no contingency fee payable if you lose. The legal costs are excluded from the sum used to calculate the percentage, unless the court orders otherwise.

We have explained that hourly, fixed and contingency fee rates may vary among **[lawyers / paralegals]** and that you can speak to other **[lawyers / paralegals]** to compare rates.

You have asked us to charge you fees based on the contingency fee option which is described in more detail below in Part 4. We agree.

There are advantages and disadvantages to choosing the contingency fee option. The advantages include that you will not have to pay any fees to us up front or on an ongoing basis, and if your matter is unsuccessful, you will not have to pay any fee to us. Our fee may cost you less than had we provided services through a different fee arrangement. The primary disadvantage is that the contingency fee option could cost you more, but on the other hand you will only pay if your matter is successful.

PART 4. FEES, DISBURSEMENTS AND BILLINGS

There are some important concepts relevant to fees, disbursements and billings. *Fees* are what we charge for work that we do for you. *Permitted disbursements* are expenses that we incur on your behalf that are not included in our fees. We are retained to assist you in recovering *damages*, including interest, whether by settlement or by final judgment. If you are successful in recovering damages, *legal costs* and *reimbursable disbursements* will likely also be recovered to help cover some or all of our fees and permitted disbursements. On the other hand, if you are

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not successful then you will likely have to pay the legal costs and reimbursable disbursements of the other side.

[OPTIONAL: Percentage of recovery]

You will receive money for your matter if the matter settles or there is a final judgment. We will only settle your matter with your consent after we provide you with the proposed settlement amount, and a detailed estimated breakdown of the proposed settlement, including the amount you will actually receive.

If you receive money for your matter, you agree to pay us a contingency fee of [___]% of the total amount recovered. In calculating the contingency fee, any amount for legal costs and reimbursable disbursements is excluded. HST will be added to the fee.

[OPTIONAL graduated contingency fee for a civil claim in Superior Court]

Our contingency fee will depend on the stage of the proceedings when money is received. Our contingency fee will be the following percentage of the total amount recovered (excluding legal costs and reimbursable disbursements):

- (1) [___]% if we settle your claim before the examination for discovery;
- (2) [___]% if we settle your claim during or after the examination for discovery and at least 90 days before trial;
- (3) [___]% if we settle your claim less than 90 days before trial or during trial, but before judgment; or
- (4) [___]% if your claim does not settle and is decided by a trial.

HST will be added to the fee.

[OPTIONAL: Percentage based on work done for a Small Claims Court matter]

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

- (1) [___] **% of the amount recovered** if we settle your claim before the settlement conference
- (2) [___] **% of the amount recovered** if we settle your claim less than 7 days before trial or during trial, but before judgment
- (3) [___] **% of the amount awarded** if your claim does not settle and is decided by a trial.

For the purposes of calculating our contingency fee, any amount recovered or awarded for legal costs and reimbursable disbursements is excluded. HST will be added to the fee.

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[OPTIONAL: Other contingency fee structure]

You understand that we will not recover more in contingency fees than you recover in damages or receive through a settlement, unless a Court orders otherwise.

Legal Costs

If we recover money at settlement or at a hearing such as a trial, we will seek legal costs. This is called partial indemnity, substantial indemnity or full indemnity costs depending on the level of the contribution.

Where we recover legal costs, they will belong to you, unless a judge has approved their payment to us.

In the event the case is lost, you may be ordered to pay legal costs and reimbursable disbursements to the other side. You are responsible for paying these amounts.

Disbursements

Permitted disbursements are expenses we incur on your behalf that are not included in our fee. We may have to hire other people such as court reporters, expert witnesses, accountants, and property appraisers to help us with your claim. We may also incur other ongoing disbursements which we are permitted to charge you. Some of these permitted disbursements are photocopying costs to provide documents for use by a Court and supplied to the opposite party; copies of records; costs of transcripts; and court filing fees.

[OPTION 1: Client pays for permitted disbursements]

You agree to pay all permitted disbursements, plus HST, even if your claim is not successful. This is different from our fee which you don't have to pay if your claim is not successful.

[Choose from: We will wait until there is recovery or the termination of this agreement for payment of permitted disbursements. / We will bill you for the permitted disbursements as incurred from time to time.]

[Optional when billing from time to time: We will charge interest on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.]

[Include when multiple clients: Our billings will be addressed to and be sent to all of you and each of you will be responsible for payment of the entire amount.]

If we successfully recover money for you, the defendant(s) will likely be required to reimburse you for some of these permitted disbursements.

[OPTION 2: Law firm initially pays disbursements, and is reimbursed *only* if there is recovery]

As part of this agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for you, we will be reimbursed for all permitted disbursements plus

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applicable taxes from any recovery. If we successfully recover money for you, the settlement or judgment most likely will require the defendant(s) to reimburse for some of these disbursements, and any such amounts would be put towards reimbursing the costs of permitted disbursements. You would be required to cover any remaining disbursement costs. We have first charge on any funds received in regards to disbursements or taxes as a result of a judgment or settlement of the claim, subject to section 47 of the *Legal Aid Services Act, 1998*.

[Optional: We will charge interest on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.]

If we are not successful in recovering money for you, we will not be reimbursed for these disbursements.

[OPTION 3: Law firm initially pays disbursements, and is reimbursed regardless of whether there is recovery]

As part of this agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for the claim, we will be reimbursed for all permitted disbursements plus applicable taxes from any recovery. You agree to pay all permitted disbursements, plus HST, even if the amounts reimbursed by the defendant(s) do not cover all of these disbursements, or if your claim is not successful. We have first charge on any funds received in regards to permitted disbursements or taxes as a result of a judgment or settlement of the claim, subject to section 47 of the *Legal Aid Services Act, 1998*.

Example of Contingency Fee Calculation

[For the example, insert the fee that is being used in the agreement. For fees set by a graduated rate, use the highest rate that may apply. You may include figures for damages and disbursements as you believe may assist your client to understand contingency fees in their context.]

To assist you, we offer the following sample contingent fee calculations. The example provided is not a prediction of what your matter may be worth or what our account may be. It is provided solely to provide an example of how your contingency fee will be calculated.

A claim settles for the following amounts paid as a lump sum:

Damages	[\$100,000.00]
Legal costs	[\$ 15,000.00]
Reimbursed Disbursements	[\$ 10,000.00]
HST (on legal costs and reimbursed disbursements)	[\$ 3,250.00]
Total (lump sum payment from defendant)	[\$128,250.00]

Assume for this example that the percentage rate is **[20%: insert percentage being used in fixed percentage, or percentage as you see fit]** of the damages including interest awarded to you. The invoice delivered to you would look like this:

Fee of [20%] x [\$100,000.00] damages	[\$20,000.00]
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Permitted Disbursements (reimbursed by defendants)	[\$10,000.00]
Other Permitted Disbursements (not paid by defendants)	[\$ 3,000.00]
HST (on fee and permitted disbursements totaling \$33,000)	[\$ 1,690.00]
Sub-total	[\$34,690.00]

You would receive [(\$128,250.00 – \$34,690.00)] = [\$93,560.00]

Structured Settlements or Periodic Payments

Instead of a lump sum payment, some claims are paid out by way of a structured settlement or periodic payments. A structured settlement pays tax-free payments over a period of time. If your claim is paid by way of a structured settlement or by periodic payments, our contingency fee is calculated and paid in a lump sum based on the total paid for the claim, including any amounts to fund the structured settlement or periodic payment. In other words, the fee payable to us is the same whether you take funds in a lump sum or elect to invest some of the funds into a structured settlement or periodic payment.

PART 5. YOUR RIGHT TO ASK FOR A COURT REVIEW OF OUR BILL

[For lawyer accounts]

If you do not believe that the fee for services is fair and reasonable, you should raise your concern with us. If we are unable to resolve your concern, you have the right to ask the Superior Court of Justice to review and approve our bill rendered pursuant to this agreement. Should you wish to do so, you may apply to the Superior Court of Justice for an assessment of the bill.

[For paralegal accounts]

If you do not believe that the fee for services is fair and reasonable, you should raise your concern with us. If we are unable to resolve your concern, you may commence a claim against us.

PART 6: DIRECTION

You agree that all funds payable for damages, legal costs, reimbursed disbursements and taxes shall be paid to us in trust from any settlement or judgment. After receipt of these funds, we are entitled to deduct the fees, permitted disbursements and taxes payable to us under this agreement and remit the balance to you in accordance with your instructions.

PART 7: TERMINATION

Ending the relationship

By you

You are free to end our relationship at any time.

By us

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We will only end our relationship with you if we are required or permitted to do so by the Rules of Professional Conduct/Paralegal Rules of Conduct. We may end our relationship with you if you lie to us, you refuse to accept and act on our advice on a significant point, you are persistently unreasonable or uncooperative in a material respect, there is a material breakdown in our communications, or we are having difficulty in obtaining adequate instructions from you.

Fees and permitted disbursements on termination

If we end our relationship, there may be circumstances when we are prohibited from charging you for fees or other costs. However, other than in such circumstances, if our relationship ends, you agree to pay our permitted disbursements and fees on an hourly fee basis based on the actual time spent up to the date of ending those services, out of the money recovered from your matter.

Our hourly fee will be based on the following rates:

[Insert hourly rates for each person who may work on the matter.]

[Optional fee increase provision: Our hourly rates may be increased no more often than on an annual basis. We will advise you in writing of any increases in advance of these increases taking effect.]

We will only charge our fee, permitted disbursements and taxes if you recover money for your claim. We will not charge an amount greater than the money that you recover for your claim.

PART 8. MINORS OR PERSONS UNDER DISABILITY

Parties under disability as defined under the *Rules of Civil Procedure* (which includes minors), as represented by a litigation guardian, must have this agreement reviewed by a judge before the agreement is finalized or as part of the motion or application for an approval of a settlement or a consent judgment. The amount of the fees, legal costs, taxes and disbursements charged to parties under disability are subject to the approval of a judge. Any money payable to a person under disability under an order or settlement shall be paid into court unless a judge orders otherwise.

[For matters in the Superior Court of Justice, add: We may apply for pre-approval of the agreement. If so, you agree to execute the required sworn Affidavit in support of such pre-approval.]

PART 9. CONFIDENTIALITY, PRIVACY AND COMMUNICATIONS

As your **[lawyers/paralegals]**, we have to share certain relevant information about your case with the opposing side(s) and the **[court / tribunal]**. Some of this information may be sensitive personal information. But unless we need to share this information as part of our work, all information you give us will be kept confidential between us. Your information will be collected, used and disclosed for the sole purpose of providing our services to you.

You authorize the collection and use of personal information in order to represent you. From time to time some of your personal information may be disclosed to third parties in connection

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with the claim (for instance, other professional advisors, expert witnesses, and consultants). You consent to us disclosing personal information where we reasonably consider it necessary to advance the claim.

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]

PART 10. NO GUARANTEE OF SUCCESS

We will act in your best interests. However, a successful outcome cannot be guaranteed.

PART 11. SIGNING THIS AGREEMENT

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**. Changes to this agreement may only be made in writing, or if a Court orders otherwise. You acknowledge and understand that all the usual protections and controls on retainers between a **[lawyer/paralegal]** and client, as defined by the Law Society of Ontario and the common law, apply to this agreement.

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.

Client Signature

Witness Signature

Date

Client Name

Witness Name

[Insert Additional Client
Signature lines as may be
necessary]

Lawyer or Paralegal
Signature

Witness Signature

Date

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Lawyer or Paralegal
Name

Witness Name

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Contingency Fee Retainer Agreement Short-Form Disclosure Document

[Firm Name, Address, Telephone Number, Email]

Key Aspects of the Contingency Fee Retainer Agreement

Name of client(s)	
Retainer Type	Choose from: Sole Representation Joint Representation
Legal services covered	Insert general description of the matter
Other related legal issues <i>not</i> covered by this retainer	
Appeals included in the legal services	Choose from: Yes No
Contingency Fee	[Insert percentage or other agreed to fee amount]
Referral Fee A referral fee will not increase the fee you pay for legal services. In addition to receiving the Contingency Fee Retainer Agreement, you should also receive a copy of the Law Society Referral Fee Agreement	No Yes - If Yes, insert referral fee amount. - If Yes, insert referral fee amount recipient.
Permitted Disbursements	Select: 1. Client Responsible for permitted disbursements 2. Law firm initially pays permitted disbursements, and is reimbursed <i>only</i> if there is recovery 3. Law firm initially pays permitted disbursements, and is reimbursed <i>regardless</i> of whether there is recovery

Mandatory Standard Contingency
Fee Agreement
(Based on Law Society
recommendations and proposed
legislative amendments)

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Proposed amendments to the *Solicitors Act* and its regulation, and new Law Society requirements

Contingency Fee Retainer Agreement

[Firm Name, Address, Telephone Number, Email]

[Date]

[Client Name(s)]
[Client Address(es)]

Re: [Insert general description of matter]

PART 1. KNOW YOUR RIGHTS

Before signing this agreement, you should carefully read the Know Your Rights document provided. You should then carefully read this agreement.

PART 2. OUR SERVICES

Legal Services Covered by This Agreement

You retain us to represent you to ***[Describe the nature of the matter and the precise scope of the retainer]***. You retain us to represent you through to settlement or through to the end of trial ***[If the retainer includes appeals add: and on appeal should there be an appeal.]***

Legal services not covered by this Agreement

[You have not retained us to ***[where appropriate, specify matters excluded from the retainer.]*** [We have recommended that you ***[where appropriate, indicate that you have recommended that someone else be retained or that the client further consider the exclusion keeping in mind limitation periods.]***

[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 of [describe cause of action] / may have a claim [in tort / for motor vehicle accident benefits / long term disability / CPP-disability etc.]] you have not asked us to take any legal action concerning this.]

[If there is more than one client, include:]

Representing Multiple Clients

We are being retained to represent the following people: *[names of clients]*. No information received from any one of you in connection with this matter can be treated as confidential from the others. If we should receive information in connection to the matter from one of you which we are instructed to keep confidential from others of you, we may have to stop acting for some or all of you.

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After discussion with you, we have concluded that, at least at present, each of your individual interests in this matter are the same or sufficiently similar. If a conflict later develops that cannot be resolved, we cannot continue to act for both or all of you.

[Include 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 we will refer you to another lawyer or paralegal.]

[Include if applicable: We confirm that you are aware that we act regularly and have a continuing relationship with _____ and that we have recommended that you obtain independent legal advice about the joint retainer prior to retaining us.]

PART 3. YOUR OPTIONS WITH RESPECT TO FEE ARRANGEMENTS

As we have explained, there are different ways a **[lawyer /paralegal]** can charge their fees for services rendered, for example:

- charging an hourly fee for work done
- charging a fixed fee for work done
- charging a contingency fee based on your recovery in this matter

We have explained that hourly, fixed and contingency fee rates may vary among **[lawyers / paralegals]** and that you can speak to other **[lawyers / paralegals]** to compare rates.

You have asked us to charge you fees based on the contingency fee option which is described in more detail below in Part 4. We agree.

There are advantages and disadvantages to choosing the contingency fee option. The advantages include that you will not have to pay any fees to us up front or on an ongoing basis, and if your matter is unsuccessful, you will not have to pay any fee to us. Our fee may cost you less than had we provided services through a different fee arrangement. The primary disadvantage is that the contingency fee option could cost you more, but on the other hand you will only pay if your matter is successful.

PART 4. FEES, DISBURSEMENTS AND BILLINGS

There are some important concepts relevant to fees, disbursements and billings. *Fees* are what we charge for work that we do for you. *Permitted disbursements* are expenses that we incur on your behalf that are not included in our fees. We are retained to assist you in recovering *damages*, including interest, whether by settlement or by final judgment. If you are successful in recovering damages, *legal costs* and *reimbursable disbursements* will likely also be recovered to help cover some or all of our fees and permitted disbursements. On the other hand, if you are not successful then you will likely have to pay the legal costs and reimbursable disbursements of the other side.

[OPTIONAL: Percentage of recovery]

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Proposed amendments to the *Solicitors Act* and its regulation, and new Law Society requirements

If you receive money for your claim, you agree to pay us a contingency fee of [___]% of the total amount recovered including amounts for legal costs, plus all disbursements and HST.

[OPTIONAL addition for matters which may be decided by a trial in which courts award costs on the basis of partial, substantial and full indemnity. This option does not apply to Small Claims Court matters and Tribunals that do not award costs on this basis.]

If you receive money for your claim, you agree to pay us a contingency fee of [___]% of the total amount recovered including amounts for legal costs, plus all disbursements and HST.

In the event that the matter proceeds to a hearing, either in court or another tribunal, we will charge a fee equal to the greater of:

- (a) the amount which is [___]% of the total recovery including damages and legal costs; and
- (b) the amount which is calculated as follows:
 - a. In the event that legal costs are awarded on a full or substantial indemnity basis, the amount equal to the amount of those legal costs. If this is the case, you will receive 100% of the damages.
 - b. In the event that costs are awarded on a partial indemnity basis, (i) the amount equal to the amount of those legal costs plus (ii) the amount equal to 2/3 of the amount of those legal costs, provided that the second amount will not exceed [$\frac{1}{2}$ of ___]% of the damages. If this is the case, you will receive at least [**100 minus $\frac{1}{2}$ of ___**]% of the damages recovery.
 - c. In the event that some costs are awarded on a partial indemnity basis and some costs are awarded on a full or substantial indemnity basis or in the event that costs are awarded on a basis in between partial and substantial indemnity, an amount that fairly reflects the approach taken above.

For the purposes of calculating our contingency fee, any amount awarded in respect of reimbursable disbursements is excluded. HST will be added to the fee.

[OPTIONAL graduated contingency fee for a civil claim in Superior Court]

Our contingency fee will depend on the stage of the proceedings when money is received. Our contingency fee will be the following percentage of the total amount recovered:

- (1) [___]% if we settle your claim before the examination for discovery;
- (2) [___]% if we settle your claim during or after the examination for discovery and at least 90 days before trial;

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- (3) [___]% if we settle your claim less than 90 days before trial or during trial, but before judgment; or
- (4) If the matter is decided by a trial, we will charge a fee equal to the greater of:
- (a) [___]% of the total amount recovered including amounts for legal costs; and
 - (c) the amount which is calculated as follows:
 - a. In the event that legal costs are awarded on a full or substantial indemnity basis, the amount equal to the amount of those legal costs. If this is the case, you will receive 100% of the damages.
 - b. In the event that costs are awarded on a partial indemnity basis, (i) the amount equal to the amount of those legal costs plus (ii) the amount equal to 2/3 of the amount of those legal costs, provided that the second amount will not exceed [1/2 of ___]% of the damages. If this is the case, you will receive at least [100 minus ½ of ___]% of the damages recovery.
 - c. In the event that some costs are awarded on a partial indemnity basis and some costs are awarded on a full or substantial indemnity basis or in the event that costs are awarded on a basis in between partial and substantial indemnity, an amount that fairly reflects the approach taken above.

For the purposes of calculating our contingency fee, any amount awarded in respect of reimbursable disbursements is excluded. HST will be added to the fee.

[OPTIONAL: Percentage based on work done for a Small Claims Court matter]

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

- (1) [___]% of the amount recovered if we settle your claim before the settlement conference
- (2) [___]% of the amount recovered if we settle your claim less than 7 days before trial or during trial, but before judgment
- (3) [___]% of the amount awarded if your claim does not settle and is decided by a trial.

For the purposes of calculating our contingency fee, any amount awarded in respect of reimbursable disbursements is excluded. HST will be added to the fee.

[OPTIONAL: Other contingency fee structure]

You understand that we will not recover more in contingency fees than you recover in damages or receive through a settlement.

See Schedule "A" for an example showing how fees are calculated.

Legal Costs

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If we recover money at settlement or at a hearing such as a trial, we will seek legal costs. This is called partial indemnity, substantial indemnity or full indemnity costs depending on the level of the contribution.

In the event the case is lost, you may be ordered to pay legal costs and reimbursable disbursements to the other side. You are responsible for paying these amounts.

Interim Costs Awarded to You

Interim costs can be awarded to a party prior to judgment including for succeeding on a motion prior to trial. *Interim costs* received on account of legal costs will be paid to us to assist us in continuing to advance your claim. However, these payments will be treated as advance payments against the final fee payable by you and these payments will be included in the costs in the calculation of our final fee.

Interim costs received on account of reimbursable disbursements will be paid to whoever is responsible for paying disbursements. If you are responsible for paying disbursements, then these amounts will be paid to you. If we are responsible for paying disbursements, then these amounts will be paid to us.

[Choose from the options below:]

[Option 1: If there are *interim costs* which are greater than the amount to which we are ultimately entitled on account of fees and permitted disbursements, then those *interim costs* will be paid to you.]

[Option 2: If there are *interim costs* which are greater than the amount to which we are ultimately entitled on account of fees and permitted disbursements, then those *interim costs* will be kept by us as fees.]

Disbursements

Permitted disbursements are expenses we incur on your behalf that are not included in our fee. We may have to hire other people such as court reporters, expert witnesses, accountants, and property appraisers to help us with your claim. We may also incur other ongoing disbursements which we are permitted to charge you. Some of these permitted disbursements are photocopying costs to provide documents for use by a Court and supplied to the opposite party; copies of records; costs of transcripts; and court filing fees.

[OPTION 1: Client pays for permitted disbursements]

You agree to pay all permitted disbursements, plus HST, even if your claim is not successful. This is different from our fee which you don't have to pay if your claim is not successful.

[Choose from: We will wait until there is recovery or the termination of this agreement for payment of permitted disbursements. / We will bill you for the permitted disbursements as incurred from time to time.]

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[Optional when billing from time to time: We will charge interest on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.]

[Include when multiple clients: Our billings will be addressed to and be sent to all of you and each of you will be responsible for payment of the entire amount.]

If we successfully recover money for you, the defendant(s) will likely be required to reimburse you for some of these permitted disbursements.

[OPTION 2: Law firm initially pays disbursements, and is reimbursed *only* if there is recovery]

As part of this agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for you, we will be reimbursed for all permitted disbursements plus applicable taxes from any recovery. If we successfully recover money for you, the settlement or judgment most likely will require the defendant(s) to reimburse for some of these disbursements, and any such amounts would be put towards reimbursing the costs of permitted disbursements. You would be required to cover any remaining disbursement costs. We have first charge on any funds received in regards to disbursements or taxes as a result of a judgment or settlement of the claim, subject to section 47 of the *Legal Aid Services Act, 1998*.

[Optional: We will charge interest on the unpaid balance of any account(s) thirty days after the account has been mailed to you. The rate of interest will be noted on the account we send to you.]

If we are not successful in recovering money for you, we will not be reimbursed for these disbursements.

[OPTION 3: Law firm initially pays disbursements, and is reimbursed *regardless* of whether there is recovery]

As part of this agreement, we will initially pay all disbursements plus HST. If we are successful in recovering money for the claim, we will be reimbursed for all permitted disbursements plus applicable taxes from any recovery. You agree to pay all permitted disbursements, plus HST, even if the amounts reimbursed by the defendant(s) do not cover all of these disbursements, or if your claim is not successful. We have first charge on any funds received in regards to permitted disbursements or taxes as a result of a judgment or settlement of the claim, subject to section 47 of the *Legal Aid Services Act, 1998*.

Examples of Contingency Fee Calculations

See the attached Schedule "A" below for examples of how our contingency fee is calculated.

Structured Settlements or Periodic Payments

Instead of a lump sum payment, some claims are paid out by way of a structured settlement or periodic payments. A structured settlement pays tax-free payments over a period of time. If your claim is paid by way of a structured settlement or by periodic payments, our contingency fee is

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calculated and paid in a lump sum based on the total paid for the claim, including any amounts to fund the structured settlement or periodic payment. In other words, the fee payable to us is the same whether you take funds in a lump sum or elect to invest some of the funds into a structured settlement or periodic payment.

PART 5. YOUR RIGHT TO ASK FOR A COURT REVIEW OF OUR BILL

[For lawyer accounts] [TO INCLUDE PARALEGALS IF PARALEGAL ASSESSMENT INTRODUCED]

If you do not believe that the fee for services is fair and reasonable, you should raise your concern with us. If we are unable to resolve your concern, you have the right to ask the Superior Court of Justice to review and approve our bill rendered pursuant to this agreement. Should you wish to do so, you may apply to the Superior Court of Justice for an assessment of the bill.

[For paralegal accounts] [TO BE REMOVED IF PARALEGAL ASSESSMENTS INTRODUCED]

If you do not believe that the fee for services is fair and reasonable, you should raise your concern with us. If we are unable to resolve your concern, you may commence a claim against us.

PART 6: DIRECTION

You agree that all funds payable for damages, legal costs, reimbursed disbursements and taxes shall be paid to us in trust from any settlement or judgment. After receipt of these funds, we are entitled to deduct the fees, permitted disbursements and taxes payable to us under this agreement and remit the balance to you in accordance with your instructions.

PART 7: TERMINATION

Ending the relationship

By you

You are free to end our relationship at any time.

By us

We will only end our relationship with you if we are required or permitted to do so by the Rules of Professional Conduct/Paralegal Rules of Conduct. We may end our relationship with you if you lie to us, you refuse to accept and act on our advice on a significant point, you are persistently unreasonable or uncooperative in a material respect, there is a material breakdown in our communications, or we are having difficulty in obtaining adequate instructions from you.

Fees and permitted disbursements on termination

If we end our relationship, there may be circumstances when we are prohibited from charging you for fees or other costs. However, other than in such circumstances, if our relationship ends,

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you agree to pay our permitted disbursements and fees on an hourly fee basis based on the actual time spent up to the date of ending those services, out of the money recovered from your matter.

Our hourly fee will be based on the following rates:

[Insert hourly rates for each person who may work on the matter.]

[Optional fee increase provision: Our hourly rates may be increased no more often than on an annual basis. We will advise you in writing of any increases in advance of these increases taking effect.]

We will only charge our fee, permitted disbursements and taxes if you recover money for your claim. We will not charge an amount greater than the money that you recover for your claim.

PART 8. MINORS OR PERSONS UNDER DISABILITY

Parties under disability as defined under the *Rules of Civil Procedure* (which includes minors), as represented by a litigation guardian, must have this agreement reviewed by a judge before the agreement is finalized or as part of the motion or application for an approval of a settlement or a consent judgment. The amount of the fees, legal costs, taxes and disbursements charged to parties under disability are subject to the approval of a judge. Any money payable to a person under disability under an order or settlement shall be paid into court unless a judge orders otherwise.

[For matters in the Superior Court of Justice, add: We may apply for pre-approval of the agreement. If so, you agree to execute the required sworn Affidavit in support of such pre-approval.]

PART 9. CONFIDENTIALITY, PRIVACY AND COMMUNICATIONS

As your **[lawyers/paralegals]**, we have to share certain relevant information about your case with the opposing side(s) and the **[court / tribunal]**. Some of this information may be sensitive personal information. But unless we need to share this information as part of our work, all information you give us will be kept confidential between us. Your information will be collected, used and disclosed for the sole purpose of providing our services to you.

You authorize the collection and use of personal information in order to represent you. From time to time some of your personal information may be disclosed to third parties in connection with the claim (for instance, other professional advisors, expert witnesses, and consultants). You consent to us disclosing personal information where we reasonably consider it necessary to advance the claim.

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]

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[client email]

PART 10. NO GUARANTEE OF SUCCESS

We will act in your best interests. However, a successful outcome cannot be guaranteed.

PART 11. SIGNING THIS AGREEMENT

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**. Changes to this agreement may only be made in writing, or if a Court orders otherwise. You acknowledge and understand that all the usual protections and controls on retainers between a **[lawyer/paralegal]** and client, as defined by the Law Society of Ontario and the common law, apply to this agreement.

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.

Client Signature

Witness Signature

Date

Client Name

Witness Name

**[Insert Additional Client
Signature lines as may be
necessary]**

Lawyer or Paralegal
Signature

Witness Signature

Date

Lawyer or Paralegal
Name

Witness Name

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Contingency Fee Retainer Agreement Schedule "A"

[For the examples, insert the fee that is being used in the agreement. For fees set by a graduated rate, use the highest rate that may apply. You may include figures for damages and disbursements as you believe may assist your client to understand contingency fees in their context.]

To assist you, we offer the following sample contingent fee calculations. The examples provided are not predictions of what your matter may be worth or what our account may be. They are provided solely to provide examples of how your contingency fee may be calculated.

A claim settles for the following amounts paid as a lump sum:

Damages	[\$100,000.00]
Costs	[\$ 15,000.00]
Reimbursed Disbursements	[\$ 10,000.00]
HST (on legal costs and disbursements)	[\$ 3,250.00]
Total (lump sum payment from defendant)	[\$128,250.00]

Assume for this example that the fee would be **[20%]** of the damages including interest awarded to the client. The client receives the total amount of the costs. The invoice delivered to the client would look like this:

Fee of [20%] on ([\$100,000.00] damages + [\$10,000] costs)	[\$22,000.00]
Permitted Disbursements (reimbursed by defendants)	[\$10,000.00]
Other Permitted Disbursements (not paid by defendants)	[\$ 3,000.00]
HST (on fee and permitted disbursements totaling \$25,000)	[\$ 3,250.00]
Sub-total	[\$38,250.00]

The client would then receive **([\$128,250.00] – [\$38,250]) = [\$90,000]**.

[FOR MATTERS WHERE THERE IS AN OPTION TO ELECT BETWEEN DIFFERENT TYPES OF FEES IF SUCCESSFUL AT A HEARING]:

To illustrate how fee may be determined following success at a hearing, we offer the following sample calculations.

Example 2(a)

A dispute goes to a hearing and the court or tribunal awards the following amounts, including costs on a *full indemnity* basis.

Award (damages, benefits etc.)	[\$100,000.00]
Costs (Full indemnity basis)	[\$ 30,000.00]
Permitted Disbursements	[\$ 10,000.00]
HST on costs and disbursements	[\$ 5,200.00]

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Total **[\$145,200.00]**

We could elect between the **[\$30,000]** full indemnity costs awarded by the court or tribunal, or a fee determined using the same calculation as we would for settlement.

Assume for this example that the contingency fee under the agreement based on the same calculation as would be used for a settlement would be **[20%]** of the award to the client and costs.

$(\$100,000 \text{ Award} + \mathbf{[\$30,000]} \text{ Costs}) \times \mathbf{[20\%]} + \text{HST} = \mathbf{[\$26,000]} + \text{HST}$

In this example, we would select the higher amount of **[\$30,000] + HST**.

Example 2(b)

A dispute goes to a hearing and the court or tribunal awards the following amounts, including costs on a *partial indemnity* basis.

Award (damages, benefits etc.)	[\$100,000.00]
Costs (Partial indemnity basis)	[\$ 20,000.00]
Permitted Disbursements	[\$ 15,000.00]
HST (on costs and disbursements)	[\$ 3,900.00]
Total	[\$133,900.00]

Assume for this example that the contingency fee under the agreement based on the same calculation as would be used for a settlement would be **[20%]** of the award to the client and costs.

We could elect between:

- i) Using the same calculation as we would for settlement, which would be:

$(\mathbf{[\$100,000]} \text{ Award} + \mathbf{[\$20,000]} \text{ Costs}) \times \mathbf{[20\%]} + \text{HST} = \mathbf{[\$24,000]} + \text{HST}$
 Total fee, including HST = **[\$27,120]**

and

- ii) Charging a fee based on the following calculation:

Partial indemnity costs	[\$ 20,000.00]
Additional 2/3 of partial indemnity cost (2/3 of \$20,000)	[\$ 13,333.00]
Total fee, excluding HST	[\$ 33,333.33]
HST on fee	[\$ 4,333.33]
Total fee, including HST	[\$ 37,666.66]

In this case, we would charge the higher amount between the two options, for total fees of **[\$37,666]** including HST.

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Contingency Fee Retainer Agreement Short-Form Disclosure Document

[Firm Name, Address, Telephone Number, Email]

Key Aspects of the Contingency Fee Retainer Agreement

Name of client(s)	
Retainer Type	Choose from: Sole Representation Joint Representation
Legal services covered	Insert general description of the matter
Other related legal issues <i>not</i> covered by this retainer	
Appeals included in the legal services	Choose from: Yes No
Contingency Fee	[Insert percentage or other agreed to fee amount]
Referral Fee A referral fee will not increase the fee you pay for legal services. In addition to receiving the Contingency Fee Retainer Agreement, you should also receive a copy of the Law Society Referral Fee Agreement	No Yes - If Yes, insert referral fee amount. - If Yes, insert referral fee amount recipient.
Permitted Disbursements	Select: 1. Client Responsible for permitted disbursements 2. Law firm initially pays permitted disbursements, and is reimbursed <i>only</i> if there is recovery 3. Law firm initially pays permitted disbursements, and is reimbursed <i>regardless</i> of whether there is recovery

Know Your Rights Guide for the
Public
(Based on Law Society
recommendations and current
legislation)

Law Society Requirements for Contingency Fees

What Clients Need to Know

Hiring a lawyer or paralegal is an important decision. Before hiring a lawyer or paralegal on a contingency fee basis, there is information that you need to know.

To ensure transparency and to protect the public, the Law Society requires that lawyers and paralegals provide their clients with this document. The information that you need to know is set out in five sections:

1. Learning the basic terms
2. Deciding whether contingency fees are right for you
3. Comparing legal services and fees
4. Hiring a lawyer or paralegal on a contingency fee basis
5. Ending a lawyer- or paralegal-client contingency fee retainer agreement

You should read all 5 sections of this document before reading and signing a contingency fee retainer agreement.

If you decide to hire a lawyer or paralegal on a contingency fee basis, you should also keep a copy of this document for your records.

1. Learning the basic terms

What are hourly rates and fixed fees?

An *hourly rate* is a fee arrangement where a lawyer or paralegal charges for each hour (or portion of an hour) that the lawyer or paralegal works on the client's case. For example, if the lawyer's fee is \$200 per hour and the lawyer works 5 hours, the fee will be \$1,000, plus HST. Lawyers and paralegals typically have different fee scales with more senior lawyers and paralegals charging a higher hourly rate than those who are less experienced. Typically, the lawyer or paralegal would bill the client on an ongoing basis and the client would be required to pay these bills regularly. The client would also be required to pay regardless of whether the client received a settlement or was successful at a proceeding, such as a trial or hearing.

A *fixed fee* (or a flat fee) is a fee arrangement where a lawyer or paralegal charges a specific, total fee, plus HST, regardless of the amount of time that the lawyer or paralegal spends working on the case. Usually a fixed fee is paid by the client to the lawyer or paralegal before the lawyer or paralegal begins the legal work.

What are permitted disbursements?

Permitted disbursements are expenses that a lawyer or paralegal has paid on a client's behalf to others who have provided services in support of the case. Permitted disbursements are not included as part of an hourly rate or a contingency fee, but may be included in a fixed fee. Examples of permitted disbursements are hiring court reporters, expert witnesses, accountants or property appraisers. Lawyers and paralegals are also permitted to charge clients for other ongoing permitted disbursements such as photocopying costs to provide documents for use by

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a court and supplied to the opposite party, copies of records, costs of transcripts and court filing fees.

What are costs?

Costs are a money award made by a court or tribunal for expenses in bringing or defending a legal proceeding or a step in a proceeding. Costs may also be ordered against a party, in favour of the other, for failing to follow the court's directions or instructions before or during a step in the case.

Partial indemnity costs reimburse some of the legal expenses that the successful party paid.

Substantial indemnity costs reimburse most, but not all, of the legal expenses paid by the successful party.

Full indemnity costs reimburse all or almost all of the legal expenses paid by the successful party.

What are contingency fees?

Contingency fees are fees for a lawyer's or paralegal's services that are charged to and payable by a client only if you receive money for your matter if the matter settles or there is a final judgment. Payment of the fee is *contingent* or dependent upon the outcome. Contingency fees are most often calculated as a percentage of the settlement or amount awarded at a proceeding, plus permitted disbursements. HST will be added to the contingency fee.

What are staged or graduated contingency fees?

Sometimes the percentage of the contingency fee charged by a lawyer or paralegal depends on the stage of the proceeding when the matter is resolved. This is called a staged or graduated contingency fee. If the matter resolves at an earlier stage, then the percentage charged by the lawyer or paralegal is lower than if the matter resolves or is decided at a later stage. This arrangement is intended to balance the amount of work done by a lawyer or paralegal with the amount that the client pays.

What are partial contingency fees?

In a partial contingency fee arrangement, only part of the fee charged to and payable by the client depends on whether you are successful in recovering money for the claim. For example, the client may agree to pay a discounted hourly rate for legal services regardless of whether there is a settlement or final judgment and a contingency fee only if there is recovery.

What is a contingency fee retainer agreement?

A contingency fee retainer agreement is a legal document that sets out the terms and conditions of the relationship between the client and the lawyer or paralegal when the lawyer or paralegal is charging the client on a contingency fee basis.

The Law Society has prepared a contingency fee retainer agreement that covers the requirements set out in the *Rules of Professional Conduct/Paralegal Rules of Conduct* and the *Solicitors Act*. Lawyers and paralegals are required to use this form of contingency fee retainer agreement, but are permitted to customize certain sections of the agreement for their own practice area and the specific matter. The Agreement can be found at www.lso.ca.

2. Deciding whether contingency fees are right for you

For what matters are contingency fees permitted?

Contingency fees are permitted for all matters except for family law and criminal or quasi-criminal matters. If your matter relates to family or criminal law, a lawyer or paralegal is not permitted to charge you a contingency fee. Typically, for such matters, lawyers or paralegals charge clients on a fixed-fee or an hourly basis.

Do I have to pay for legal fees on a contingency fee basis?

No, there are other options and your lawyer or paralegal is required to tell you about them. One option is for a lawyer or paralegal to charge you for the time that they spend working on your case at an hourly rate plus permitted disbursements. Another less common option is a fixed-fee arrangement.

What legal services are covered by a contingency fee retainer agreement?

It depends. In some situations, the contingency fee retainer agreement covers all stages of the matter, including appeals if there are any. In other cases, there are limits on the legal services provided. The legal services that are covered will be described in the contingency fee retainer agreement. If you cannot determine what services are included after reading the contingency fee retainer agreement, you should ask the lawyer or paralegal what legal services are included and excluded. You should ask these questions and ensure the agreement is clear before signing the agreement.

How are legal fees calculated when a lawyer or paralegal acts on a contingency fee basis?

Contingency fees are most often calculated as a percentage of the settlement or amounts awarded at a proceeding, plus permitted disbursements. The way that the percentage is calculated depends on the case and the lawyer or paralegal.

You should review the example provided by the lawyer or paralegal in the contingency fee retainer agreement. This example shows how the lawyer or paralegal plans to calculate the contingency fee in your matter. If you have questions about how the calculation works, you should ask the lawyer or paralegal to explain it to you before you sign the agreement.

How do lawyers and paralegals determine the percentage or other basis for the contingency fee?

Lawyers and paralegals consider a number of factors in determining the appropriate percentage or other basis for a contingency fee. These factors include:

- The likelihood of success
- The nature and complexity of the claim
- The expense and risk of pursuing the claim
- The amount of the expected recovery
- Who will receive an award of costs.

In all cases, the fee charged must be fair and reasonable. The factors for what is fair and reasonable have been set out in decisions by the Ontario courts.

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Is there a maximum that a lawyer or paralegal can charge as a contingency fee?

No. However, a lawyer or paralegal's fees cannot be more than the amount that you recover in a proceeding or receive as a settlement, unless you agree and the court approves this agreement.

Each lawyer or paralegal is required to disclose their own maximum contingency fee percentage. If the lawyer or paralegal has a website, this information must be posted there. If the lawyer or paralegal does not have a website, the lawyer or paralegal must provide this information to you when you first contact them.

Who is responsible for paying for permitted disbursements?

It depends. There are three options:

1. The client pays for the permitted disbursements directly.
2. The lawyer or paralegal initially pays for the permitted disbursements and is reimbursed only if the client receives a settlement or wins in a proceeding.
3. The lawyer or paralegal initially pays for the permitted disbursements and is reimbursed regardless of whether the client receives a settlement or wins in a proceeding. In such cases, the lawyer or paralegal may bill the client for permitted disbursements from time to time or the lawyer or paralegal may wait until the end of the lawyer- or paralegal-client relationship to bill the client.

Where a client is paying for the permitted disbursements regardless of the outcome of their matter, particularly where the client is paying for the permitted disbursements directly or reimbursing the lawyer or paralegal for permitted disbursements at regular intervals, the client is assuming some of the lawyer or paralegal's risk in taking on their case. In such cases, the client may be able to negotiate a lower contingency fee percentage with the lawyer or paralegal.

You should read the contingency fee retainer agreement carefully to see who will pay for permitted disbursements. If you cannot determine who pays for the permitted disbursements after reading the contingency fee retainer agreement, you should ask the lawyer or paralegal about this and ensure the agreement is clear before signing it.

How and when are contingency fees paid?

Contingency fees are paid from any award or settlement money. The award or settlement money will be paid to your lawyer or paralegal. Your lawyer or paralegal will then deduct the contingency fee (and permitted disbursements in applicable cases) plus any HST. The lawyer or paralegal will give you the balance.

What is a structured settlement and how does it impact me or my lawyer or paralegal?

A structured settlement means that a client will receive tax-free payments at set intervals for a period of time. The client receives these smaller payments over time instead of one larger lump-sum payment up front. Structured settlements are most common in personal injury cases to provide for future care and medical needs of an injured person. There may be advantages to having all or part of a settlement structured or, in some cases, there may be a legal requirement to accept payments over a period of time. If your claim is paid out by way of a structured settlement, the contingency fee is calculated and paid in lump-sum based on the total that will be paid, including any amounts to fund the structured settlement. In other words, the fees payable to your lawyer or paralegal are the same whether you take funds in a lump-sum or

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choose a structured settlement. That said, a structured settlement may mean that you will not receive any settlement payments right away as your lawyer or paralegal's contingency fees are paid first. You should ask your lawyer or paralegal about this possibility.

If I win at an interim step, get a settlement or win at a proceeding, will the other side pay my costs?

If you win an interim step, get a settlement or win at a proceeding, in most cases your lawyer or paralegal will seek costs on your behalf. Where your lawyer or paralegal recovers costs on your behalf, they will belong to you, unless a judge approves payment to your lawyer or paralegal. Because receiving costs on a partial indemnity basis is most common, you should note that a costs award is unlikely to cover all or even most of your legal fees and permitted disbursements.

Is there any financial downside to me if I lose at a proceeding?

If you lose at a proceeding, you may have to pay the other side's legal costs. If it is a civil matter, costs will likely be calculated on a partial or substantial indemnity basis. This may be a considerable amount of money.

Is there anything that I can do to protect myself from paying the other side's costs if I lose?

Legal expense insurance is a type of insurance policy that covers policyholders against the potential costs of legal action against them. There are a number of insurers and types of policies. Legal expense insurance may be available to protect you from some or all of a costs award that you may have to pay if you lose. You should discuss with your lawyer or paralegal whether legal expense insurance is an option for you.

What is a disadvantage of contingency fees for clients?

A disadvantage of choosing a contingency fee arrangement is that you may end up paying your lawyer or paralegal more in legal fees than if he/she were to charge you an hourly fee for work done. This could happen if your lawyer or paralegal is able to settle your claim quickly.

What are some of the advantages of contingency fees for clients?

First, you will not have to pay any legal fees up front or on an ongoing basis. Second, if the lawyer or paralegal cannot settle your case or if you lose at a proceeding, then in many cases you would not have to pay your lawyer or paralegal any fees and you may not have to pay any permitted disbursements. Third, if your matter goes to a proceeding and you win, the contingency fee may be less than an hourly fee if your lawyer or paralegal has spent a significant amount of time on the proceeding.

3. Comparing legal services and fees

How can I find other lawyers or paralegals and their rates so I can compare legal fees?

By visiting the Law Society Referral Service (LSRS) at www.findlegalhelp.ca, you can request a referral to a lawyer or paralegal for a free consultation of up to 30 minutes. If you are in crisis or are otherwise unable to use the online service, you can call LSRS directly at 1-855-947-5255 Monday to Friday, between 9 am – 5pm, to speak to an LSRS representative.

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If the lawyer or paralegal who you are considering hiring has a website, you will be able to locate their maximum contingency fee percentage on the site. Even if the lawyer or paralegal has a website with their maximum contingency fee percentage, you may still want to consider contacting the lawyer or paralegal. A lower contingency fee percentage may apply to your case.

Once I have received a contingency fee retainer agreement from a lawyer or paralegal, can I still compare prices with other lawyers or paralegals?

Yes. Before you sign a contingency fee retainer agreement, you have the right to continue to consider different lawyers or paralegals. After signing a contingency fee retainer agreement, you still have that right. But, if you choose to end the contingency fee retainer agreement and the lawyer or paralegal has already begun doing work on your case, you will be responsible for paying the lawyer or paralegal's hourly fees for that work as set out in the contingency fee retainer agreement.

4. Hiring a lawyer or paralegal on a contingency fee basis

How do I hire a lawyer or paralegal on a contingency fee basis?

Once you have read this document and the contingency fee retainer agreement, if you decide to hire the lawyer or paralegal, then you and the lawyer or paralegal must sign and date the contingency fee retainer agreement. The agreement must also be witnessed by another person. By signing the agreement, you are confirming that you have sufficient information to enter into the lawyer- or paralegal-client relationship and that you agree to the terms, including the payment terms. The lawyer or paralegal is required to provide you with a signed copy of the contingency fee retainer agreement for your records. The lawyer or paralegal will also keep a signed copy.

What are my responsibilities and rights as a client?

You are responsible for giving your lawyer or paralegal all of the facts and being completely honest with them. It is very important that you give your lawyer or paralegal all information that you have or have access to about your claim. This includes copies of documents.

You have the right to information about your case. You should understand the range of outcomes for your case, including how likely you are to win or lose. If you have questions about your case, you should ask your lawyer or paralegal.

Even though your lawyer or paralegal will give you legal advice, you have the right to make all critical decisions about your matter.

What responsibilities does a lawyer or paralegal have to me?

Your lawyer or paralegal is required to keep you informed about matters that arise, discuss with you any significant decisions you must make and give you legal advice as the matter

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progresses. This includes letting you know if there are major expenses for your case and the impact these expenses will have on the total settlement or award you may receive.

When your lawyer or paralegal is providing advice to you about settlement, the lawyer or paralegal should provide you with a written estimate of the approximate net amount that you would receive based on the settlement offer. The estimate should include enough information so that you can make an informed decision and should include a breakdown of the lawyer or paralegal's fees, permitted disbursements and any other charges that will be deducted from the amount that you will receive.

5. Ending a lawyer- or paralegal-client contingency fee retainer agreement

If I am unhappy with my lawyer or paralegal after signing a contingency fee retainer agreement, do I have the right to dismiss them?

Yes, you have the right to dismiss your lawyer or paralegal at any time. However, you should be aware that contingency fee retainer agreements have sections that come into effect if you end the relationship. For example, if you end the relationship with your lawyer or paralegal before a settlement or before or during a proceeding, you may owe your lawyer or paralegal money for legal fees at an hourly rate for services rendered and permitted disbursements paid on your behalf to date. These can be significant sums of money.

Can a lawyer or paralegal end the contingency fee retainer agreement with me?

Yes, but the lawyer or paralegal can only end the contingency fee retainer agreement with you in limited circumstances. For example, your lawyer or paralegal must end the relationship with you if you instruct them to act contrary to their professional obligations. The lawyer or paralegal may end their relationship with you if you lie to them, you refuse to accept and act on their advice on a significant point, you are persistently unreasonable or uncooperative in a material respect, you do not pay their bills after they provide you with reasonable notice, there is a material breakdown in your communications, or they are having difficulty in obtaining adequate instructions from you.

How will I know when the contingency fee has been paid?

When you are ultimately charged the contingency fee, your lawyer or paralegal is required to provide you with an account that:

- Clearly sets out the total amount of the settlement or award and the amount that you will receive
- Clearly lists the permitted disbursements, legal fees and taxes charged to you
- Has a statement explaining the reasonableness of the fee
- Has a statement that explains that you have the right to have the account reviewed and what the timelines are to do this.

What can I do if I think my lawyer or paralegal's final bill is too high?

Once you have received your bill, if you think the bill is too high, you have two options. The first option is to talk to your lawyer or paralegal about the bill to see if the lawyer or paralegal is

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willing to reduce it. If not, the second option is different depending on whether you retained a lawyer or paralegal.

If you are unable to settle the disagreement over the bill directly with your *paralegal*, you may contact the Small Claims Court to commence a claim.

If you are unable to settle the dispute over the bill directly with your *lawyer*, you may contact the Assessment Office to have your bill reviewed. This is a process where an Assessment Officer of the Ontario Superior Court of Justice reviews a lawyer's bill. It is important that you do not wait too long to start the review process. If you begin more than one month from the time you received your lawyer's bill, you will have to get permission from a judge of the Superior Court of Justice to have the bill reviewed. This may cost you time and money and you may not receive the judge's permission.

For more information, see [Your Legal Bill – Too High?](#)

Know Your Rights Guide for the Public

(Based on Law Society
recommendations and proposed
legislative amendments)

Law Society Requirements for Contingency Fees

What Clients Need to Know

Hiring a lawyer or paralegal is an important decision. Before hiring a lawyer or paralegal on a contingency fee basis, there is information that you need to know.

To ensure transparency and to protect the public, the Law Society requires that lawyers and paralegals provide their clients with this document. The information that you need to know is set out in five sections:

1. Learning the basic terms
2. Deciding whether contingency fees are right for you
3. Comparing legal services and fees
4. Hiring a lawyer or paralegal on a contingency fee basis
5. Ending a lawyer- or paralegal-client contingency fee retainer agreement

You should read all 5 sections of this document before reading and signing a contingency fee retainer agreement.

If you decide to hire a lawyer or paralegal on a contingency fee basis, you should also keep a copy of this document for your records.

1. Learning the basic terms

What are hourly rates and fixed fees?

An *hourly rate* is a fee arrangement where a lawyer or paralegal charges for each hour (or portion of an hour) that the lawyer or paralegal works on the client's case. For example, if the lawyer's fee is \$200 per hour and the lawyer works 5 hours, the fee will be \$1,000, plus HST. Lawyers and paralegals typically have different fee scales with more senior lawyers and paralegals charging a higher hourly rate than those who are less experienced. Typically, the lawyer or paralegal would bill the client on an ongoing basis and the client would be required to pay these bills regularly. The client would also be required to pay regardless of whether the client received a settlement or was successful at a proceeding, such as a trial or hearing.

A *fixed fee* (or a flat fee) is a fee arrangement where a lawyer or paralegal charges a specific, total fee, plus HST, regardless of the amount of time that the lawyer or paralegal spends working on the case. Usually a fixed fee is paid by the client to the lawyer or paralegal before the lawyer or paralegal begins the legal work.

What are permitted disbursements?

Permitted disbursements are expenses that a lawyer or paralegal has paid on a client's behalf to others who have provided services in support of the case. Permitted disbursements are not included as part of an hourly rate or a contingency fee, but may be included in a fixed fee. Examples of permitted disbursements are hiring court reporters, expert witnesses, accountants or property appraisers. Lawyers and paralegals are also permitted to charge clients for other

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ongoing permitted disbursements such as photocopying costs to provide documents for use by a court and supplied to the opposite party, copies of records, costs of transcripts and court filing fees.

What are costs?

Costs are a money award made by a court or tribunal for expenses in bringing or defending a legal proceeding or a step in a proceeding. Costs may also be ordered against a party, in favour of the other, for failing to follow the court's directions or instructions before or during a step in the case.

Partial indemnity costs reimburse some of the legal expenses that the successful party paid.

Substantial indemnity costs reimburse most, but not all, of the legal expenses paid by the successful party.

Full indemnity costs reimburse all or almost all of the legal expenses paid by the successful party.

What are contingency fees?

Contingency fees are fees for a lawyer's or paralegal's services that are charged to and payable by a client only if you receive money for your matter if the matter settles or there is a final judgment. Payment of the fee is *contingent* or dependent upon the outcome.

Contingency fees are most often calculated as a percentage of the total amount of damages and costs recovered in a settlement or awarded at a proceeding, plus permitted disbursements and HST.

However, if the matter goes to a proceeding, such as a trial in court or a hearing before a tribunal, the lawyer or paralegal will have the option to calculate their fee as the greater of one of the following:

- The percentage of the total amount of damages and costs awarded in the proceeding set out in the contingency fee retainer agreement; or
 - If costs are awarded in favour of the client on a substantial or full indemnity basis, the amount of costs awarded only; or
 - If costs are awarded in favour of the client on a partial indemnity basis, the amount equal to the amount of those legal costs plus the amount equal to 2/3 of the amount of those costs, so long as the amount by which the costs are increased is not more than 50% of the fee payable on the damages awarded.
 - If some costs are awarded on a partial indemnity basis and some costs are awarded on a full or substantial indemnity basis or in the event that costs are awarded on a basis in between partial and substantial indemnity, an amount that fairly reflects the approach taken above.
-

Amounts awarded for permitted disbursements are excluded from all contingency fee calculations and payment will depend upon who incurred the expense and the terms of the contingency fee retainer agreement. See "Who is responsible for paying for permitted disbursements?" HST will be added to the contingency fee.

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What are staged or graduated contingency fees?

Sometimes the percentage of the contingency fee charged by a lawyer or paralegal depends on the stage of the proceeding when the matter is resolved. This is called a staged or graduated contingency fee. If the matter resolves at an earlier stage, then the percentage charged by the lawyer or paralegal is lower than if the matter resolves or is decided at a later stage. This arrangement is intended to balance the amount of work done by a lawyer or paralegal with the amount that the client pays. If the matter goes to a proceeding, the lawyer or paralegal will have the options described above under “What are contingency fees?”

What are partial contingency fees?

In a partial contingency fee arrangement, only part of the fee charged to and payable by the client depends on whether you are successful in recovering money for your claim. For example, the client may agree to pay a discounted hourly rate for legal services regardless of whether there is a settlement or final judgment and a contingency fee only if there is recovery. If the matter goes to a proceeding, the lawyer or paralegal will have the options described above under “What are contingency fees?”

What is a contingency fee retainer agreement?

A contingency fee retainer agreement is a legal document that sets out the terms and conditions of the relationship between the client and the lawyer or paralegal when the lawyer or paralegal is charging the client on a contingency fee basis.

The Law Society has prepared a contingency fee retainer agreement that covers the requirements set out in the *Rules of Professional Conduct/Paralegal Rules of Conduct* and the *Solicitors Act*. Lawyers and paralegals are required to use this form of contingency fee retainer agreement, but are permitted to customize certain sections of the agreement for their own practice area and the specific matter. The Agreement can be found at www.lso.ca.

2. Deciding whether contingency fees are right for you

For what matters are contingency fees permitted?

Contingency fees are permitted for all matters except for family law and criminal or quasi-criminal matters. If your matter relates to family or criminal law, a lawyer or paralegal is not permitted to charge you a contingency fee. Typically, for such matters, lawyers or paralegals charge clients on a fixed-fee or an hourly basis.

Do I have to pay for legal fees on a contingency fee basis?

No, there are other options and your lawyer or paralegal is required to tell you about them. One option is for a lawyer or paralegal to charge you for the time that they spend working on your case at an hourly rate plus permitted disbursements. Another less common option is a fixed-fee arrangement.

What legal services are covered by a contingency fee retainer agreement?

It depends. In some situations, the contingency fee retainer agreement covers all stages of the matter, including appeals if there are any. In other cases, there are limits on the legal services provided. The legal services that are covered will be described in the contingency fee retainer

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agreement. If you cannot determine what services are included after reading the contingency fee retainer agreement, you should ask the lawyer or paralegal what legal services are included and excluded. You should ask these questions and ensure the agreement is clear before signing the agreement.

How are legal fees calculated when a lawyer or paralegal acts on a contingency fee basis?

Contingency fees are most often calculated as a percentage of the settlement or amounts awarded at a proceeding, plus permitted disbursements. The way that the percentage is calculated depends on the case and the lawyer or paralegal.

You should review the example provided by the lawyer or paralegal in the contingency fee retainer agreement. This example shows how the lawyer or paralegal plans to calculate the contingency fee in your matter. If you have questions about how the calculation works, you should ask the lawyer or paralegal to explain it to you before you sign the agreement.

How do lawyers and paralegals determine the percentage or other basis for the contingency fee?

Lawyers and paralegals consider a number of factors in determining the appropriate percentage or other basis for a contingency fee. These factors include:

- The likelihood of success
- The nature and complexity of the claim
- The expense and risk of pursuing the claim
- The amount of the expected recovery
- Who will receive an award of costs.

In all cases, the fee charged must be fair and reasonable. The factors for what is fair and reasonable have been set out in decisions by the Ontario courts.

Is there a maximum that a lawyer or paralegal can charge as a contingency fee?

No. However, a lawyer or paralegal's fees cannot be more than the amount that you recover in a proceeding or receive as a settlement, unless you agree and the court approves this agreement.

Each lawyer or paralegal is required to disclose their own maximum contingency fee percentage. If the lawyer or paralegal has a website, this information must be posted there. If the lawyer or paralegal does not have a website, the lawyer or paralegal must provide this information to you when you first contact them.

Who is responsible for paying for permitted disbursements?

It depends. There are three options:

1. The client pays for the permitted disbursements directly.
2. The lawyer or paralegal initially pays for the permitted disbursements and is reimbursed only if the client receives a settlement or wins in a proceeding.
3. The lawyer or paralegal initially pays for the permitted disbursements and is reimbursed regardless of whether the client receives a settlement or wins in a proceeding. In such cases, the lawyer or paralegal may bill the client for permitted disbursements from time

to time or the lawyer or paralegal may wait until the end of the lawyer- or paralegal-client relationship to bill the client.

Where a client is paying for the permitted disbursements regardless of the outcome of their matter, particularly where the client is paying for the permitted disbursements directly or reimbursing the lawyer or paralegal for permitted disbursements at regular intervals, the client is assuming some of the lawyer or paralegal's risk in taking on their case. In such cases, the client may be able to negotiate a lower contingency fee percentage with the lawyer or paralegal.

You should read the contingency fee retainer agreement carefully to see who will pay for permitted disbursements. If you cannot determine who pays for the permitted disbursements after reading the contingency fee retainer agreement, you should ask the lawyer or paralegal about this and ensure the agreement is clear before signing it.

How and when are contingency fees paid?

Contingency fees are paid from any award or settlement money. The award or settlement money will be paid to your lawyer or paralegal. Your lawyer or paralegal will then deduct the contingency fee (and permitted disbursements in applicable cases) plus any HST. The lawyer or paralegal will give you the balance, unless the contingency fee retainer agreement states otherwise.

What is a structured settlement and how does it impact me or my lawyer or paralegal?

A structured settlement means that a client will receive tax-free payments at set intervals for a period of time. The client receives these smaller payments over time instead of one larger lump-sum payment up front. Structured settlements are most common in personal injury cases to provide for future care and medical needs of an injured person. There may be advantages to having all or part of a settlement structured or, in some cases, there may be a legal requirement to accept payments over a period of time.

If your claim is paid out by way of a structured settlement, the contingency fee is calculated and paid in lump-sum based on the total that will be paid, including any amounts to fund the structured settlement. In other words, the fees payable to your lawyer or paralegal are the same whether you take funds in a lump-sum or choose a structured settlement. That said, a structured settlement may mean that you will not receive any settlement payments right away as your lawyer or paralegal's contingency fees are paid first. You should ask your lawyer or paralegal about this possibility.

If I win at an interim step, will the other side pay my costs?

If you win at an interim step, such as a motion prior to trial, your lawyer or paralegal will seek costs on your behalf. Interim costs received on account of legal costs will be paid to your lawyer or paralegal to assist them in continuing to advance your claim. However, these payments will be treated as advance payments against the final fee payable by you and these payments will be included in the costs in the calculation of the final fee. If such payments are greater than the amount that the lawyer or paralegal is ultimately entitled to as the final fee, interim costs may be repaid to the client.

Interim costs received on account of permitted disbursements will be paid to whoever is responsible for paying disbursements. If you are responsible for paying disbursements, then

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these amounts will be paid to you. If your lawyer or paralegal is responsible for paying disbursements, then these amounts will be paid to them.

When the final fee is calculated, it may be that the interim payments for costs were greater than the amount the lawyer or paralegal was entitled to as the final fee. In that case, the interim costs may be repaid to the client or may be kept by the lawyer or paralegal. This should be set out in the contingency fee retainer agreement.

If it is not clear in the contingency fee retainer agreement as to what happens in such cases, then you should ask the lawyer or paralegal about this and ensure the agreement is clear before signing it.

If I receive a settlement or win at a proceeding, will the other side pay my costs?

If you get a settlement or win at a proceeding, in most cases your lawyer or paralegal will seek costs on your behalf.

Where your lawyer or paralegal recovers costs on your behalf by way of settlement, typically, the contingency fee will be calculated as a percentage of the total of the damages and costs awarded to you. You should carefully review your contingency fee retainer agreement to confirm this.

If you win at a proceeding, the lawyer or paralegal will have the options described above under “What are contingency fees?”

Is there any financial downside to me if I lose at a proceeding?

If you lose at a proceeding, you may have to pay the other side’s legal costs. If it is a civil matter, costs will likely be calculated on a partial or substantial indemnity basis. This may be a considerable amount of money.

Is there anything that I can do to protect myself from paying the other side’s costs if I lose?

Legal expense insurance is a type of insurance policy that covers policyholders against the potential costs of legal action against them. There are a number of insurers and types of policies. Legal expense insurance may be available to protect you from some or all of a costs award that you may have to pay if you lose. You should discuss with your lawyer or paralegal whether legal expense insurance is an option for you.

What is a disadvantage of contingency fees for clients?

A disadvantage of choosing a contingency fee arrangement is that you may end up paying your lawyer or paralegal more in legal fees than if he/she were to charge you an hourly fee for work done. This could happen if your lawyer or paralegal is able to settle your claim quickly.

What are some of the advantages of contingency fees for clients?

First, you will not have to pay any legal fees up front or on an ongoing basis. Second, if the lawyer or paralegal cannot settle your case or if you lose at a proceeding, then in many cases you would not have to pay your lawyer or paralegal any fees and you may not have to pay any permitted disbursements. Third, if your matter goes to a proceeding and you win, the contingency fee may be less than an hourly fee if your lawyer or paralegal has spent a significant amount of time on the proceeding.

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3. Comparing legal services and fees

How can I find other lawyers or paralegals and their rates so I can compare legal fees?

By visiting the Law Society Referral Service (LSRS) at www.findlegalhelp.ca, you can request a referral to a lawyer or paralegal for a free consultation of up to 30 minutes. If you are in crisis or are otherwise unable to use the online service, you can call LSRS directly at 1-855-947-5255 Monday to Friday, between 9 am – 5pm, to speak to an LSRS representative.

The Law Society also has an online Lawyer and Paralegal Directory, with a complete listing of legal professionals who are licensed by the Law Society to offer legal services in Ontario. The directory is searchable by name, city or postal code, and can be accessed at www.lawyerandparalegal.directory.

If the lawyer or paralegal who you are considering hiring has a website, you will be able to locate their maximum contingency fee percentage on the site. Even if the lawyer or paralegal has a website with their maximum contingency fee percentage, you may still want to consider contacting the lawyer or paralegal. A lower contingency fee percentage may apply to your case.

Once I have received a contingency fee retainer agreement from a lawyer or paralegal, can I still compare prices with other lawyers or paralegals?

Yes. Before you sign a contingency fee retainer agreement, you have the right to continue to consider different lawyers

or paralegals. After signing a contingency fee retainer agreement, you still have that right. But, if you choose to end the contingency fee retainer agreement and the lawyer or paralegal has already begun doing work on your case, you will be responsible for paying the lawyer or paralegal's hourly fees for that work as set out in the contingency fee retainer agreement.

4. Hiring a lawyer or paralegal on a contingency fee basis

How do I hire a lawyer or paralegal on a contingency fee basis?

Once you have read this document and the contingency fee retainer agreement, if you decide to hire the lawyer or paralegal, then you and the lawyer or paralegal must sign and date the contingency fee retainer agreement. The agreement must also be witnessed by another person. By signing the agreement, you are confirming that you have sufficient information to enter into the lawyer- or paralegal-client relationship and that you agree to the terms, including the payment terms. The lawyer or paralegal is required to provide you with a signed copy of the contingency fee retainer agreement for your records. The lawyer or paralegal will also keep a signed copy.

What are my responsibilities and rights as a client?

You are responsible for giving your lawyer or paralegal all of the facts and being completely honest with them. It is very important that you give your lawyer or paralegal all information that you have or have access to about your claim. This includes copies of documents.

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You have the right to information about your case. You should understand the range of outcomes for your case, including how likely you are to win or lose. If you have questions about your case, you should ask your lawyer or paralegal.

Even though your lawyer or paralegal will give you legal advice, you have the right to make all critical decisions about your matter.

What responsibilities does a lawyer or paralegal have to me?

Your lawyer or paralegal is required to keep you informed about matters that arise, discuss with you any significant decisions you must make and give you legal advice as the matter progresses. This includes letting you know if there are major expenses for your case and the impact these expenses will have on the total settlement or award you may receive.

When your lawyer or paralegal is providing advice to you about settlement, the lawyer or paralegal should provide you with a written estimate of the approximate net amount that you would receive based on the settlement offer. The estimate should include enough information so that you can make an informed decision and should include a breakdown of the lawyer or paralegal's fees, permitted disbursements and any other charges that will be deducted from the amount that you will receive.

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If I am unhappy with my lawyer or paralegal after signing a contingency fee retainer agreement, do I have the right to dismiss them?

Yes, you have the right to dismiss your lawyer or paralegal at any time. However, you should be aware that contingency fee retainer agreements typically have sections that come into effect if you end the relationship. For example, if you end the relationship with your lawyer or paralegal before a settlement or before or during a proceeding, you may owe your lawyer or paralegal money for legal fees at an hourly rate for services rendered and permitted disbursements paid on your behalf to date. These can be significant sums of money.

Can a lawyer or paralegal end the contingency fee retainer agreement with me?

Yes, but the lawyer or paralegal can only end the contingency fee retainer agreement with you in limited circumstances. For example, your lawyer or paralegal must end the relationship with you if you instruct them to act contrary to their professional obligations. The lawyer or paralegal may end their relationship with you if you lie to them, you refuse to accept and act on their advice on a significant point, you are persistently unreasonable or uncooperative in a material respect, you do not pay their bills after they provide you with reasonable notice, there is a material breakdown in your communications, or they are having difficulty in obtaining adequate instructions from you.

How will I know when the contingency fee has been paid?

When you are ultimately charged the contingency fee, your lawyer or paralegal is required to provide you with an account that:

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Draft Know Your Rights Guide

Proposed amendments to the *Solicitors Act* and its regulation, and new Law Society requirements

- Clearly sets out the total amount of the settlement or award and the amount that you will receive
- Clearly lists the permitted disbursements, legal fees and taxes charged to you
- Has a statement explaining the reasonableness of the fee
- Has a statement that explains that you have the right to have the account reviewed and what the timelines are to do this.

What can I do if I think my lawyer or paralegal's final bill is too high?

Once you have received your bill, if you think the bill is too high, you have two options. The first option is to talk to your lawyer or paralegal about the bill to see if the lawyer or paralegal is willing to reduce it. If not, the second option is different depending on whether you retained a lawyer or paralegal.

If you are unable to settle the disagreement over the bill directly with your *paralegal*, you may contact the Small Claims Court to commence a claim.

If you are unable to settle the dispute over the bill directly with your *lawyer*, you may contact the Assessment Office to have your bill reviewed. This is a process where an Assessment Officer of the Ontario Superior Court of Justice reviews a lawyer's bill. It is important that you do not wait too long to start the review process. If you begin more than one month from the time you received your lawyer's bill, you will have to get permission from a judge of the Superior Court of Justice to have the bill reviewed. This may cost you time and money and you may not receive the judge's permission.

For more information, see [Your Legal Bill – Too High?](#)

Rules of Professional Conduct Contingency Fee Amendments (Proposed Amendments)

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 or criminal or quasi-criminal matters, a lawyer may enter into a written agreement in accordance with the *Solicitors Act* and the regulations thereunder that provides that the lawyer's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the lawyer's services are to be provided.

3.6-2.1 (1) A lawyer who enters into a written agreement as provided in rule 3.6-2 must:

(a) use the form of agreement prescribed by the Law Society;

(b) provide the client with the Law Society's [Insert name of document – ex: Client's Know Your Rights] document and a reasonable opportunity to review and consider that information before retaining the lawyer on a contingency fee basis; and

(c) when the contingency fee is ultimately charged to the client, provide an account to the client that:

(i) clearly delineates the total all-inclusive amount of the settlement or award and the net amount that will be received by the client;

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

(iii) contains a statement explaining the reasonableness of the fee; and

(iv) contains a statement that the client has the right to assess the account within the timelines set out in the *Solicitors Act 1990* and that sets out those timelines;

(2) Rule 3.6-2.1 does not apply

(a) to an agreement in which a lawyer is retained to represent one or more persons as plaintiffs in a proceeding commenced pursuant to the *Class Proceedings Act 1992*;

(b) where the client is an organization, including a corporation, (i) with more than 99 employees (ii) or that has gross annual revenues in excess of \$10 million (iii) or that employs in-house counsel; or

(c) where the court has approved the contingency fee agreement or the court will necessarily approve the ultimate contingency fee

[Amended - November 2002, October 2004, April 2018]

Commentary

[1] In determining the appropriate percentage or other basis of the contingency fee, the lawyer and the client should 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 should provide the client with a written statement setting out the substance of the factors considered in determining the basis of the contingency fee. The lawyer and client may agree that in addition to the fee payable under the written agreement, any amount arising as a result of an award of costs or costs obtained as a part of a settlement is to be paid to the lawyer. Such agreement under the *Solicitors Act* must receive judicial approval. In such circumstances, a smaller percentage of the award than would otherwise be agreed upon for the contingency fee, after considering all relevant factors, will generally be appropriate. The test is whether the fee in all of the circumstances is fair and reasonable.

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

[2] [FLSC - not in use]

[3] The requirements set out in Rule 3.6.2-1 are intended to ensure that contingency fee arrangements are clear, that legal fees are transparent, fair, and reasonable, and that potential clients may compare fees as a factor to consider when retaining a lawyer.

[4] Where a lawyer has entered into a contingency fee agreement with a client and is providing advice to the client about settlement of the client's matter, the lawyer should provide the client a written estimate of the approximate net amount to be received by the client on the basis of the settlement offer(s). This estimate should include information sufficient for the client to make an informed decision, and include a breakdown of the lawyer's fees, disbursements and/or any other charge that will be deducted from the amount the client will receive.

[5] The requirement set out in Rule 3.6.2-1(1)(c)(iii) that the lawyer provide a statement explaining the reasonableness of the fee is intended to ensure that contingency fees charged are transparent and reasonable. The Ontario Court of

Law Society of Ontario Call for Comment
Draft Amendments to the Lawyer Rules of Professional Conduct

Appeal has outlined the test for reasonableness in the context of contingency fees. In *Raphael Partners v. Lam* (2002), 61 O.R. (3d) 417 at paragraph 50, the Court of Appeal stated 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.

3.6-2.2(1) A lawyer who intends to enter into a written contingency fee agreement as provided in rule 3.6-2 must disclose the maximum percentage of any fee that a client will be charged contingent, in whole or in part, on the successful disposition or completion of the matter, either by publication on the lawyer's website, or by providing that information to potential clients when the lawyer is first contacted.

(2) 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 or publish maximum contingency fee percentages applicable to each of the lawyer's practice areas and will be required to report the maximum percentage or the percentages for each of the lawyer's practice areas to the Law Society.

[New – April 2018]

Commentary

[1] The practice areas that a lawyer may publish maximum contingency fee rates under Rule 3.6-2.2(2) include:

(a) Commercial litigation;

(b) Employment law;

(c) Personal injury – Motor Vehicle Accident – Tort;

(d) Personal injury – Motor Vehicle Accident – Statutory Accident Benefits Schedule;

(e) Personal injury – Medical malpractice;

(f) Personal injury – General;

(g) Income tax assessment;

(h) Property tax assessment;

(i) Workplace Safety and Insurance;

(j) Long-term disability claims;

(k) Short-term disability claims.

[2] A lawyer may enter into an agreement in which the contingent fee rate is above his or her published maximum rate. Unless judicially approved as being exceptional, the lawyer would need in that circumstance to:

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

(b) if a lawyer enters into an agreement in which the contingent fee rate is higher than the lawyer's previously disclosed maximum rate, then the lawyer must thereafter use the new higher rate as the lawyer's disclosed maximum rate.

Transitional Requirements

3.6-2.3 The provisions of Rules 3.6-2.1 and 3.6-2.2 do not apply to contingency fee agreements entered into on or before [Transition date to be determined].

SECTION 4.2 MARKETING

Advertising of Fees

4.2-2 A lawyer may advertise fees charged by the lawyer for legal services if

(a) the advertising is reasonably precise as to the services offered for each fee quoted;

(b) the advertising states whether other amounts, such as disbursements, third party ~~charges~~ ~~changes~~ and taxes will be charged in addition to the fee; and

(c) the lawyer strictly adheres to the advertised fee in every applicable case.

[Amended - October 2014, September 2017]

4.2-2.1 A lawyer may advertise a price to act on a residential real estate transaction if;

(a) the price is inclusive of all fees for legal services, disbursements, third party charges and other amounts except for the harmonized sales tax and the following permitted disbursements: land transfer tax, government document registration fees, fees charged by government, Teranet fees, the cost of a condominium status certificate, payment for letters from creditors' lawyers regarding similar name executions and any title insurance premium;

(b) the advertisement states that harmonized sales tax and the permitted disbursements mentioned in paragraph (a) of this Rule are not included in the price;

(c) the lawyer strictly adheres to the price for every transaction;

(d) in the case of a purchase transaction, the price includes the price for acting on both the purchase and on one mortgage; and

(e) in the case of a sale transaction, the price includes the price of acting on the discharge of the first mortgage.

Commentary

[1] A lawyer who agrees to provide services pursuant to an advertised price is required to perform legal services to the standard of a competent lawyer. Clients are entitled to the same quality of legal services whether the services are provided pursuant to an advertised price or otherwise;

[2] The requirements set out in Rule 4.2-2.1 are intended to ensure that prices advertised by lawyers in residential real estate transactions are clear to consumers and comparable. The rule applies where the lawyer advertises a price for acting on a sale, a purchase or a refinancing of residential real estate;

[3] This rule applies to all forms of price advertising including in traditional media, on the internet, on the lawyer's own website and in standardized price lists. Providing a price by a website is price advertising whether prices are listed on a webpage or are only available by response to a request made on a webpage. However, this rule does not apply where a specific fee quotation is provided through a website inquiry based on an actual assessment of the work and disbursements required for the transaction provided that full disclosure is made of the anticipated types of disbursements and other charges which the consumer would be required to pay in addition to the quoted fee.

[4] Where a lawyer chooses to advertise a price for the completion of a residential real estate transaction, the lawyer should ensure that all relevant information is provided. For example, the permitted disbursements should not be set out in small print or in separate documents or webpages. Particular care should be taken with mass advertising where consumers will not have the opportunity to read and understand all of the details of the price. Lawyers should take into account the general impression conveyed by a representation and not only its literal meaning.

[5] The price in paragraph (a) of Rule 4.2-2.1 is an all-inclusive price. The only permitted exclusions from the price are the harmonized sales tax and permitted disbursements specifically mentioned in the subrule. Fees paid to government, municipalities or other similar authorities for due diligence investigations are permitted disbursements as fees charged by government. For greater certainty, the all-inclusive price is required to include overhead costs, courier costs, bank fees, postage costs, photocopy costs, third party conveyancer's title and other search or closing fees and all other costs and disbursements that are not permitted disbursements specifically mentioned under the subrule.

[New - September 2017]

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Draft Amendments to the Lawyer Rules of Professional Conduct

4.2-2.2 A lawyer who markets legal services, including by advertising, on the basis that clients may be charged fees that are contingent, in whole or in part, on the successful disposition or completion of the matter for which the lawyer's services are to be provided must comply with Rules 3.6-2.2(1) and (2).

Paralegal Rules and Guidelines Contingency Fee Amendments (Proposed Amendments)

Contingency Fees

5.01(7) Except in quasi-criminal or criminal matters, a paralegal may enter into a written agreement that provides that the paralegal's fee is contingent, in whole or in part, on the successful disposition or completion of the matter for which the paralegal's services are to be provided.

(8) A paralegal who enters into a written agreement as provided in subrule (7) must:

(a) use the form of agreement prescribed by the Law Society;

(b) provide the client with the Law Society's [Insert name of document – ex: Client's Know Your Rights] document and a reasonable opportunity to review and consider that information before retaining the paralegal on a contingency fee basis; and

(c) when the contingency fee is ultimately charged to the client, provide an account to the client that:

(i) clearly delineates the total all-inclusive amount of the settlement or award and the net amount that will be received by the client;

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

(iii) contains a statement explaining the reasonableness of the fee; and

(iv) contains a statement that the client has the right to submit a claim to have the account judicially reviewed within any applicable timelines.

(9) Subrule (8) does not apply

(a) where the client is an organization, including a corporation, (i) with more than 99 employees; (ii) or that has gross annual revenues in excess of \$10 million; (iii) or that employs a licensee who is entitled to practise law in Ontario

(b) where the court has approved the contingency fee agreement or the court will necessarily approve the ultimate contingency fee.

(10) In determining the appropriate percentage or other basis of a contingency fee under subrule (7), the paralegal shall advise the client on the factors that are being taken into account in determining the percentage or other basis, 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 and the amount of costs awarded.

Law Society of Ontario Call for Comment
Draft Amendments to the Paralegal Rules of Conduct and
Paralegal Professional Conduct Guidelines

(11) The percentage or other basis of a contingency fee agreed upon under subrule (7) shall be fair and reasonable, taking into consideration all of the circumstances and the factors listed in subrule (10).

(12) A paralegal who intends to enter into a written contingency fee agreement as provided in rule 5.01(7) must disclose the maximum percentage of any fee that a client will be charged contingent, in whole or in part, on the successful disposition or completion of the matter, either by publication on the paralegal's website, or by providing that information to potential clients when the paralegal is first contacted.

(13) 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 or publish maximum contingency fee percentages applicable to each of the paralegal's practice areas and will be required to report the maximum percentage or the percentages for each of the paralegal's practice areas to the Law Society.

Transitional Requirements

(14) The provisions of surules (8), (9), (12), and (13) do not apply to contingency fee agreements entered into on or before **[Transition date to be determined]**.

[New – April 2018]

8.03 MARKETING OF LEGAL SERVICES

Marketing of Legal Services

(1) In this Rule, "marketing" includes advertisements and other similar communications in various media as well as firm names (including trade names), letterhead, business cards and logos.

(2) A paralegal may market legal services only if the marketing

(a) is demonstrably true, accurate and verifiable;

(b) is neither misleading, confusing, or deceptive, nor likely to mislead, confuse or deceive; and

(c) is in the best interests of the public and is consistent with a high standard of professionalism.

Advertising of Fees

- (3) A paralegal may advertise fees charged by the paralegal for legal services if
- (a) the advertising is reasonably precise as to the services offered for each fee quoted;
 - (b) the advertising states whether other amounts, such as disbursements and taxes will be charged in addition to the fee; and
 - (c) the paralegal strictly adheres to the advertised fee in every applicable case
- (d) the paralegal complies with subrules 5.01(12) and (13).

GUIDELINE 13: FEES

Contingency Fees

Rule Reference: Rule 5.01(6) – ~~(8)(14)~~

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

~~24. Rule 5.01(7) outlines the factors to be considered in determining the appropriate percentage (or other basis) of the contingency fee agreement. Regardless of which factors are used to determine the fee and the other terms of the contingency fee agreement, the ultimate fee must still be fair and reasonable.~~

~~25. The contingency fee agreement should be clear about how the fee will be calculated.~~

~~26. It may be helpful for a paralegal to refer to *Regulation 195/04 to the Solicitor's Act* (which applies to contingency fees for lawyers) for guidance as to what terms should be included in a paralegal contingency fee agreement.~~

24. The requirements set out in Rule 5.01(8) are intended to ensure that contingency fee arrangements are clear, that legal fees are transparent, fair, and reasonable, and that potential clients may compare fees as a factor to consider when retaining a paralegal.

25. Where a paralegal has entered into a contingency fee agreement with a client and is providing advice to the client about settlement of the client's matter, the

Law Society of Ontario Call for Comment
Draft Amendments to the Paralegal Rules of Conduct and
Paralegal Professional Conduct Guidelines

paralegal should provide the client a written estimate of the approximate net amount to be received by the client on the basis of the settlement offer(s). This estimate should include information sufficient for the client to make an informed decision, and include a breakdown of the paralegal's fees, disbursements and/or any other charge that will be deducted from the amount the client will receive.

26. The requirement set out in Rule 5.01(8)(c)(iii) that the paralegal provide a statement explaining the reasonableness of the fee is intended to ensure that contingency fees charged are transparent and reasonable. The required statement should address each of the following factors as they apply to the matter:

(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.

It may be helpful to refer to the Ontario Court of Appeal decision in *Raphael Partners v. Lam* (2002), 61 O.R. (3d) 417, paragraph 50, where the Court of Appeal stated the factors to consider when determining the reasonableness of legal fees.

27. A paralegal may enter into an agreement in which the contingent fee rate is above the paralegal's maximum rate. Unless judicially approved as being exceptional, the paralegal would need in that circumstance to:

(a) disclose to the client the percentage fee and that it exceeds the paralegal's disclosed maximum contingency fee rate; and

(b) if a paralegal enters into an agreement in which the contingent fee rate is higher than the paralegal's previously disclosed maximum rate, then the paralegal must thereafter use the new higher rate as the paralegal's disclosed maximum rate.

FOR INFORMATION

**ANNUAL REPORT OF
THE COMPLAINTS RESOLUTION COMMISSIONER**

15. Part I of By-Law 11, which governs the office of the Complaints Resolution Commissioner, requires that the Complaints Review Commissioner (“the Commissioner”) submit an annual report to the Professional Regulation Committee (“the Committee”). The Committee must then provide the report to Convocation. The relevant section of the By-Law reads:

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.
16. The report of the Commissioner, Bernard Morrow, is attached as **Tab 7.2.1**. The report was provided to the Committee in its February 8 meeting materials.
 17. Mr. Morrow and two members of his staff attended the Committee’s meeting to discuss the report.
 18. The Commissioner’s Report was also provided to the Paralegal Standing Committee for information at its February 7 meeting.

TAB 7.2.1

Annual Report of the Complaints Resolution Commissioner

January 1, 2017 – December 31, 2017

Submitted by Bernard Morrow,
Complaints Resolution Commissioner

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A. Introduction

Section 49.14 of the *Law Society Act*, R.S.O. 1990, ch. L.8 (hereinafter referred to as the “*Act*”) provides Convocation with the statutory authority to appoint the Complaints Resolution Commissioner (hereinafter referred to as the “Commissioner”). The role and responsibilities of the Commissioner are set out in Sections 49.14 to 49.19 of the *Act* and are attached to this Report as [Appendix 1](#). The *Act* also outlines the administrative responsibilities of the office of the Commissioner (hereinafter referred to as the “CRC”).

Part 1 of By-Law 11¹ (hereinafter referred to as “By-Law 11”), made pursuant to section 62 of the *Act*, a copy of which is attached to this Report as [Appendix 2](#), elaborates on the role and functions of the Commissioner.

Bernard Morrow began a two-year appointment as Commissioner on April 1, 2014. He was re-appointed for an additional two-year term commencing April 1, 2016.

Pursuant to Section 3 of By-Law 11, the Commissioner is required to submit to the Professional Regulation Committee of the Law Society of Upper Canada (now carrying on business as the Law Society of Ontario) (hereinafter referred to as the “Law Society”) an Annual Report “upon the affairs of the office of the Commissioner during the immediately preceding year.”

This Annual Report (hereinafter referred to as “this or the Report”) covers the activities of the CRC for the 2017 calendar year. As Mr. Morrow’s time as Commissioner ends March 31, 2018, this Report also includes general observations gleaned from the four years he served in the Commissioner’s role.

B. Complaints Resolution Commissioner’s Functions

By-Law 11 provides the Commissioner with two distinct functions: complaints resolution and complaints review.

Complaints Resolution Function

The complaints resolution function provides the Commissioner with the statutory authority to perform a formal resolution role. It allows the Law Society, with the consent of the complainant and the licensee, to refer a matter to the Commissioner for resolution.

The Commissioner has broad discretion to determine the process for the resolution function. While the resolution function has been available for implementation since the establishment of the CRC in 2007, to date, the Commissioner has not been called upon to perform the resolution function.

¹ By-Law 11 was made May 1, 2007, and was most recently amended May 25, 2017.

Complaints Review Function

By-Law 11 provides the Commissioner with the statutory authority to review a complaint if a complainant requests that the Law Society refer a reviewable complaint to the Commissioner for review.

Subsection 4 (1) of By-Law 11 establishes four criteria for the review of complaints by the Commissioner. A complaint may be reviewed if,

- (a) the merits of the complaint have been considered by the Law Society;
- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Panel or Appeal Panel;
- (c) the complaint has not been previously reviewed by the Commissioner; and
- (d) the Law Society has notified the complainant that it will be taking no further action in respect of the complaint.

Subsection 4 (2) of By-Law 11 provides that a complaint may not be reviewed by the Commissioner if, in the opinion of the Commissioner, it concerns only the quantum of fees or disbursements charged by a licensee, requirements imposed on a licensee under By-Law 9 (financial transactions and records), or the negligence of a licensee.

Subsection 5 (3) of By-Law 11 requires the complainant to request a review within 60 days of being notified of the Law Society's decision to close the complaint file.

Standard of Review

Subsection 7 (2) of By-Law 11 requires the Commissioner to apply a standard of reasonableness in the review of the Law Society's investigation of a complaint. In applying this standard, the Commissioner must determine whether the Law Society's consideration of a complaint and its resulting decision to take no further action with respect to the complaint was reasonable. The Commissioner's role is similar to that of an ombudsman where a degree of deference is given to the body over which the ombudsman has oversight.

If the Commissioner is satisfied that the Law Society's consideration of a complaint and its decision to close a file was reasonable, no further action is recommended. However, if the Commissioner is not satisfied that the Law Society's consideration of a complaint and its decision was reasonable, the complaint will be referred back to the Law Society with a recommendation for further action.

Section 49.19 of the *Act* states: "A decision of the Commissioner is final and is not subject to appeal."

C. Complaints Review Process

Notice to the Complainant

Prior to 2017, upon being notified by the Law Society staff who conducted the investigation that a complaint is being closed without a referral to the Proceedings Authorization Committee (“PAC”) for further action, including disciplinary action, the complainant was advised of the right to seek a review by the Commissioner. Complainants received, with the Law Society’s closing letter, a copy of a document titled “Request for Review by the Complaints Resolution Commissioner,” a form created by the CRC (the “form”), as well as an information sheet which explains the review process (the “information sheet”).

However, in September 2017, the practice of providing complainants with the form and information sheet was discontinued by the Law Society. Instead, complainants are provided with information in the Law Society’s closing letter about the right to seek an independent review from the Commissioner, including the deadline for submitting a request, and referred to the Law Society’s website for further information. To assist complainants, the CRC has uploaded the form and the information sheet to the section of the Law Society’s website that addresses the role of the Commissioner and the work of the CRC. Attached to the Report, and marked as [Appendix 3](#), is a copy of the form. Also attached, and marked as [Appendix 4](#), is a copy of the information sheet.

On February 7, 2017, a reorganization of the Law Society’s Professional Regulation Division (“PRD”) was implemented. The former Intake Department (“Intake”), the Complaints Resolution Department (“Complaints Resolution”) and the Investigations Department (“Investigations”) were eliminated and a new Intake & Resolution Department (“Intake & Resolution”) and three Enforcement Departments (“Enforcement”) were established. Staff from Complaints Resolution were transferred to either Intake & Resolution or Enforcement. Staff who worked in Investigations, along with staff from the former Discipline Department, were transferred to Enforcement.

Within Intake & Resolution, there are two separate streams, one in which complaints are resolved and a second in which complaints are transferred to Enforcement for further action. Currently, complainants whose complaints are closed by Intake & Resolution are not offered the opportunity to request a review by the Commissioner on the basis that the complaint has not been reviewed on its merits. However, a managerial review in Intake & Resolution is available to complainants if requested. Complainants are only advised of the right to request a review by the Commissioner when the complaint has been transferred from Intake & Resolution to Enforcement, investigated on the merits, and then closed.

Processing Requests for Review

In those cases where the complainant has been offered a review by the Law Society and has submitted a request for review, the CRC sends the complainant a letter of confirmation and notifies the Law Society of the request.

The Law Society is responsible for preparing the materials for the review. A bound copy of all pertinent materials, referred to as the document book, is prepared for use at the review. The document book generally includes the Law Society's closing letter or report, copies of all relevant materials submitted by the complainant and either the licensee's written response to the complaint or a synopsis of it. Once the document book is completed, it is delivered to the CRC's Senior Coordinator. Upon receipt of the document book, the Senior Coordinator schedules the review. The CRC sends a letter to the complainant, setting out the scheduled date, time and manner in which the review will proceed and, if in-person, the place where the meeting will be held. A copy of the document book, for the complainant's use during the meeting, is enclosed with the letter. A copy of the document book is also provided to the Commissioner and to Counsel to the Commissioner, for review, in advance of the meeting.

Documents that fall within the confidentiality provisions of subsection 49.12 (1)² of the *Act* are also provided to the Commissioner and the Commissioner's Counsel. The type of information considered confidential includes the following:

- (a) Law Society record of information relating to the licensee;
- (b) evidence from third parties which is protected by confidentiality and/or solicitor-client privilege;
- (c) solicitor-client information, when the complainant is not the client or the information is in respect of other clients of the licensee.

While the Law Society notifies the licensee of the request for review, pursuant to subsection 8 (4) of By-Law 11, the licensee is not entitled to participate in the review process. Once the review is concluded, the Law Society notifies the licensee, in writing, of the Commissioner's decision.

Format of the Review Meeting

Subsection 8 (1) of By-Law 11 provides that the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Subsection 8 (2) of By-Law 11 provides:

The Commissioner shall, where practicable, meet with each complainant, whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with each complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

The Commissioner currently provides complainants with three options regarding the format of a review: in-person, teleconference or in-writing.

² Subsection 49.12 (1) states: A benchler, officer, employee, agent or representative of the Society shall not disclose any information that comes to his or her knowledge as a result of an audit, investigation, review, search, seizure or proceeding under this Part.

D. Statistical Information

What follows is relevant statistical information on the affairs of the CRC for the current year and for the two previous years, for comparison purposes.

Number of Requests for Review

Past annual reports captured the number of requests for review received from each of Complaints Resolution, Investigations and, where applicable, the Executive Director's Office. However, as a result of the PRD's reorganization, which resulted in the establishment of new departments and the transfer of staff from the former departments to these new departments, the tables provided in previous annual reports depicting the specific department that conducted the investigation are no longer relevant for comparison purposes. Accordingly, these tables have not been included in this Report.

CRC Requests Received in 2017

In 2017, the CRC received 211 requests for review. As indicated earlier in this Report, subsection 4 (1) of By-Law 11 provides that a review is only available when the merits of a complaint have been considered by the Law Society. This subsection of By-Law 11 has been interpreted to mean that the Commissioner can only review a complaint where an investigation into the merits of the complaint has been concluded.

In 2017, the CRC received 10 requests from the Law Society's Complaints & Compliance Department (formerly the Complaints Services Department) and 51 requests from Intake & Resolution. Where the CRC receives a request for a review of a complaint that the Commissioner determines is beyond his jurisdiction, the complainant is advised of the Commissioner's lack of jurisdiction and the matter is referred back to the manager of the department that closed the complaint for further consideration.

In 2017, the CRC also received 15 requests for review that were beyond the Commissioner's jurisdiction for other reasons, including the expiry of the 60 day time period for requesting a review and, in one instance, where a file went before PAC. In each of these cases, the complainant was notified in writing of the reason for the Commissioner's lack of jurisdiction to review the matter.

Therefore, of the 211 requests for review received, 76 were found to be ineligible for review by the Commissioner and 135 requests were found to be eligible for review.

By comparison, in 2016 there were 242 requests for review received, of which 62 were found to be beyond the Commissioner's jurisdiction and 180 were determined to be eligible for review.

In 2015, 261 requests for review were received, of which 66 were beyond the Commissioner's jurisdiction and 195 were found to be eligible for review.

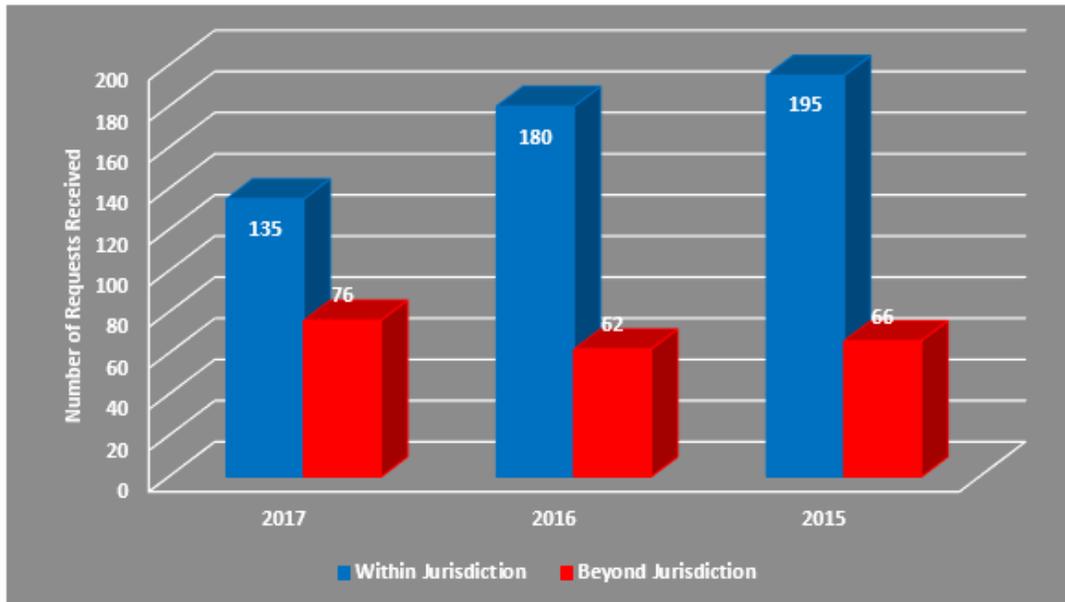
Table 1 - Comparison of Requests Received in 2017, 2016 and 2015

Table 1, above, provides a comparison of the number of requests for review received from 2015 through 2017. This table depicts those files eligible for review as well as those files in which the request was determined to be beyond the Commissioner's jurisdiction.

There has been a significant decrease in the number of eligible requests for review received in 2017. This decrease can be attributed, in part, to the reorganization of the PRD. As noted earlier, with the introduction of Intake & Resolution, many of the files previously streamed to Complaints Resolution are now closed by Intake & Resolution through which a review by the Commissioner is not offered. As previously indicated, an internal managerial review is available to complainants.

The decrease in the number of eligible requests for review is supported by the data available regarding the number of files transferred to an investigating department. The available data confirms that between 2015 and 2017 the percentage of files received by PRD that were instructed and transferred to an investigating department dropped dramatically, from over half in 2015 to less than one-quarter in 2017. Consequently, significantly fewer files were eligible for review.

Number of Reviews Conducted

Table 2 – Comparison of Reviews Conducted in 2017, 2016 and 2015

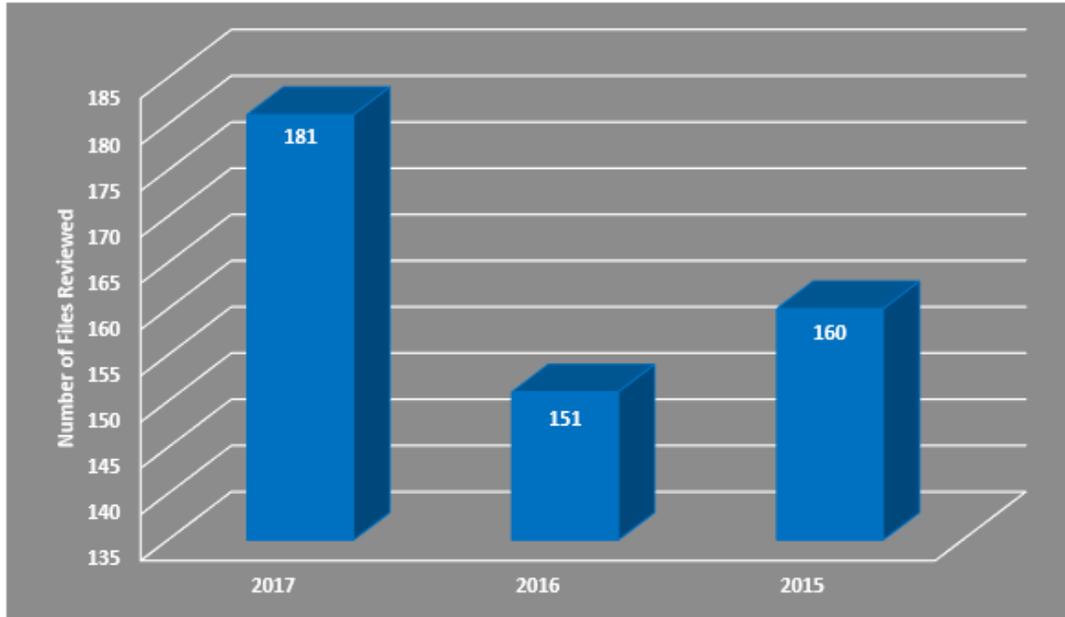


Table 2, above, provides a comparison of the number of files reviewed in 2017, 2016 and 2015.

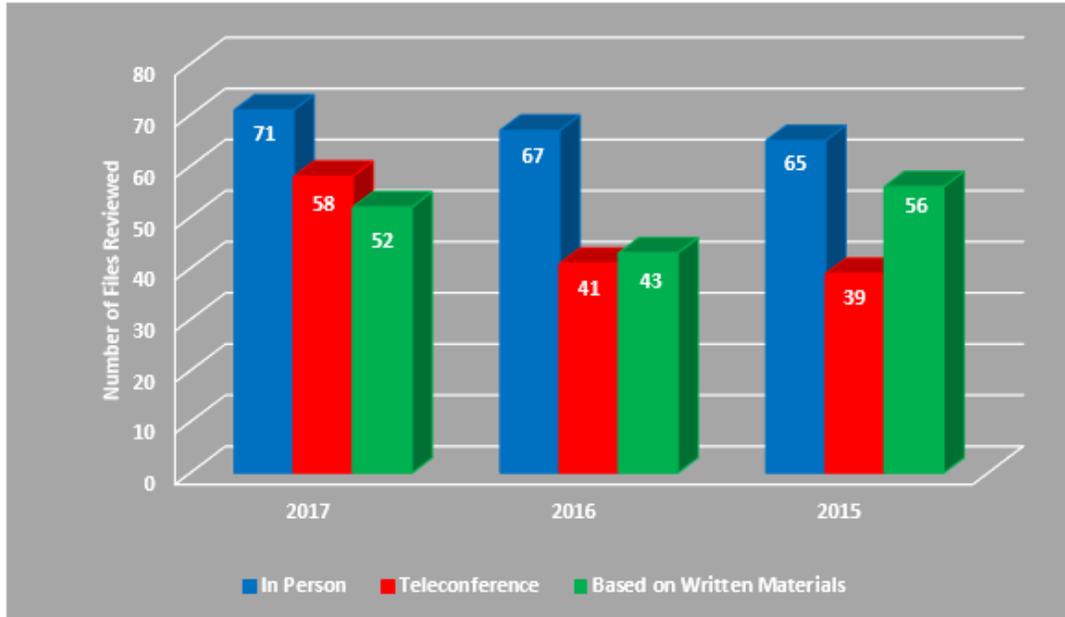
Between January 1, 2017 and December 31, 2017, the Commissioner³ reviewed 181 files. Of those 181 files, 26 involved requests for review received in 2017, 142 related to requests received in 2016 and 13 related to requests received in 2015.

By comparison, 151 files were reviewed in 2016 and 160 files were reviewed in 2015.

³ The Commissioner has the authority to appoint a delegate when a conflict arises. Due to identified conflicts, the Commissioner appointed a delegate to review six files in 2017. The 181 files reviewed by the Commissioner in 2017 include those files reviewed by his delegate.

Format of Review Meetings Conducted

Table 3 – Comparison of Format of Review Meetings Held in 2017, 2016 and 2015



The form sets out the three format options for the review: in-person, teleconference or in-writing (based on the written material contained in the Law Society's file).

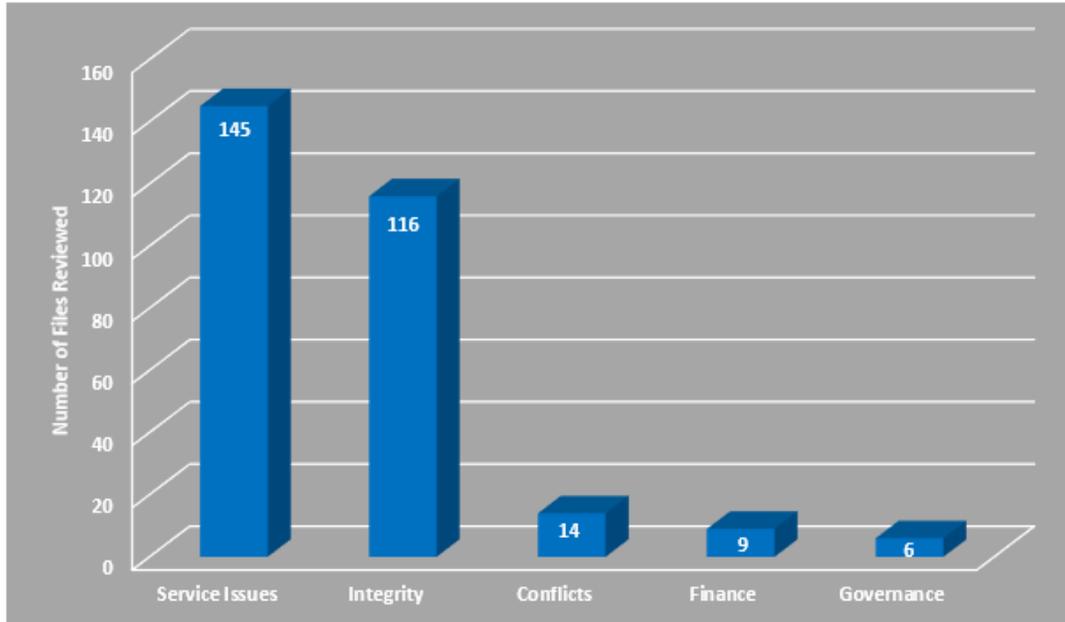
Table 3, above, indicates that during 2017, of the 181 files reviewed, 71 (39%) were reviewed by way of in-person meeting, 58 (32%) were conducted by teleconference and 52 (29%) proceeded based on the written material.

By comparison, between January 1, 2016 and December 31, 2016, of the 151 files reviewed, 67 (44%) were reviewed by way of in-person meeting, 41 (27%) were conducted by teleconference and 43 (29%) proceeded based on the written material.

In 2015, of the 160 files reviewed, 65 (41%) were reviewed by way of in-person meeting, 39 (24%) were conducted by teleconference and 56 (35%) proceeded based on the written material.

All in-person review meetings conducted in 2017 were held in Toronto. In the past, in an effort to provide greater process accessibility and choice to those complainants who reside outside the Greater Toronto Area, in-person meetings were conducted in Ottawa and London, subject to demand.

In 2017, complainants residing in or around Ottawa and London were content to participate by teleconference or to have the review conducted in writing. Accordingly, trips to Ottawa and London were not scheduled.

Predominant Issues Identified in Files Reviewed***Table 4 - Predominant Issues Identified in Files Reviewed in 2017***

The Law Society tracks the regulatory issues raised in each file. Based on the Law Society’s categorization, Table 4, above, identifies the five predominant issues raised in the 181 files reviewed in 2017. Since the current case management system may record more than one “predominant issue” in each file, the total number of issues identified exceeds the number of files reviewed.

Table 5 – Comparison of Predominant Issues Identified in Files Reviewed in 2017, 2016 and 2015

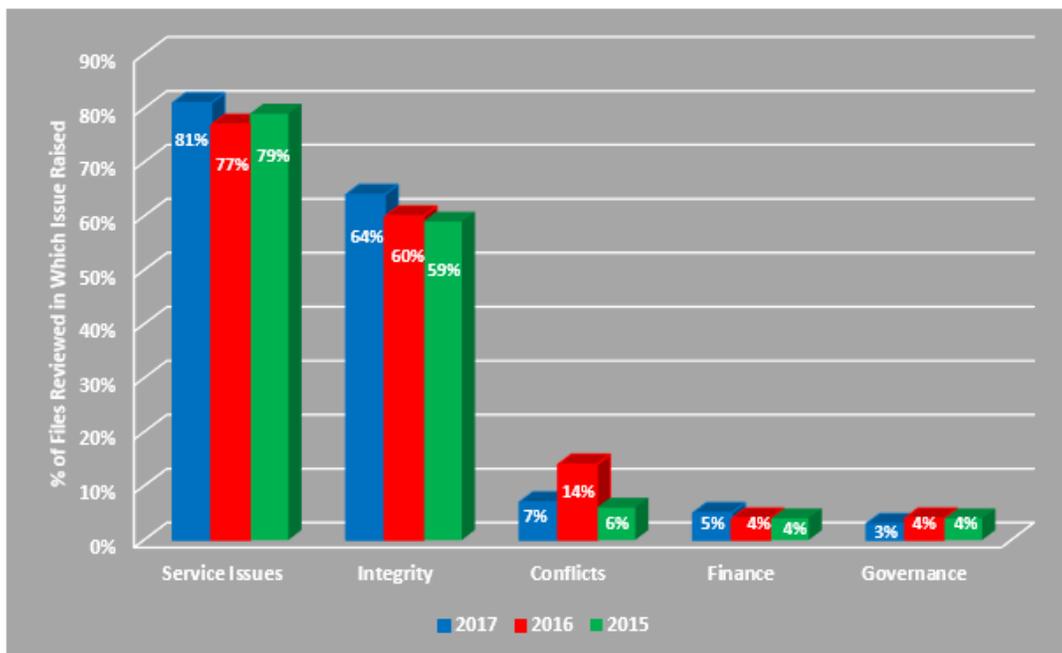


Table 5, above, provides a statistical comparison, by percentage, of the predominant issues raised in those files reviewed in 2017, 2016 and 2015. In 2017, service issues continued to be the most common issue raised by complainants. Service issues were raised in 81% of the files (145 files) reviewed in 2017. By comparison, in 2016, service issues were raised in 77% of the files (117 files) reviewed while in 2015 service issues were raised in 79% of the files (127 files) reviewed.

Results of Reviews Conducted in 2017

Figure 1 (1) – Results of Reviews Conducted in 2017 in which Decisions were Rendered

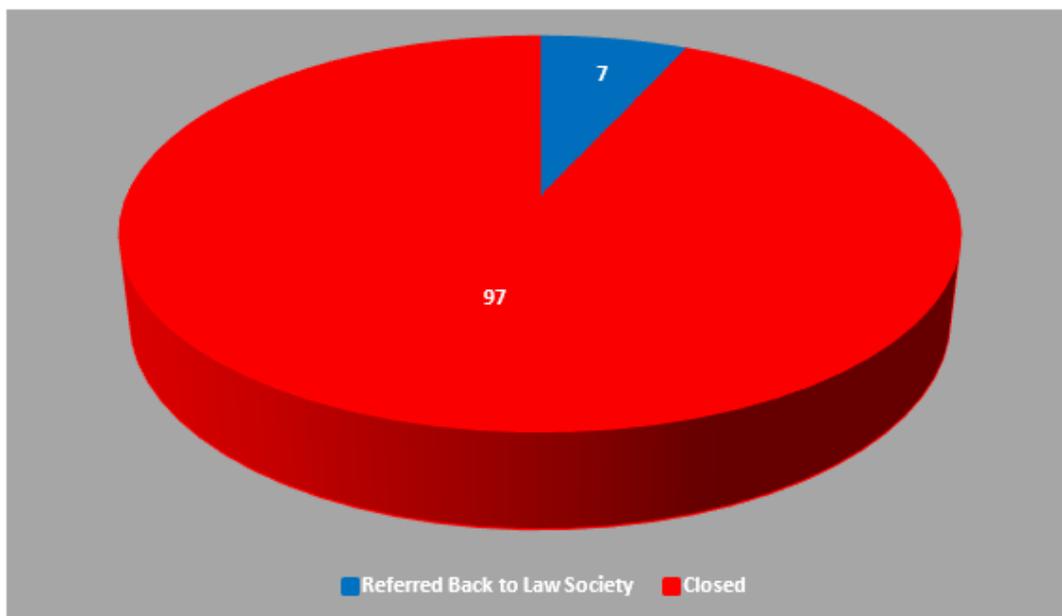


Figure 1 (1), above, reflects the results of the files reviewed in 2017 in which the Commissioner rendered a decision in 2017. While the Commissioner reviewed 181 files, 104 decisions were rendered in 2017. Of those 104 files, 97 (93%) remained closed and seven (7%) were referred back to the Law Society for further action. As of December 31, 2017, 77 decisions remained outstanding⁴.

The 97 files closed include one file where the Commissioner was satisfied that the decision to close was reasonable; however, the Commissioner brought practice and process concerns to the Law Society's attention for its consideration.

In five of the seven files that were referred back to the Law Society, the Commissioner was not satisfied that the decision to close the matter was reasonable and the files were referred back pursuant to subsection 7 (2) (b) of By-Law 11, with recommendations for further action. In another file, the Commissioner found the Law Society's decision to close to be reasonable, based on the evidence available to the Law Society at the time of closing. However, the Commissioner referred this file back, pursuant to subsection 7 (1) of By-Law 11, for further consideration as a result of receiving significant fresh evidence from the complainant. With respect to the one other file, the Commissioner referred it back to the Law Society pursuant to the application of both subsections 7 (2) (b) and 7 (1) of By-Law 11.

⁴ Many of these decisions have since been rendered and any currently outstanding will be issued on or before March 31, 2018.

As in previous years, CRC Counsel, together with Counsel to the Executive Director and department managers, have worked to resolve and clarify process related issues raised in files, prior to scheduled reviews, including issues relating to the sharing of information with complainants. In addition, the Commissioner, the Executive Director, and their Counsel have discussed various systemic practice and process concerns that have arisen during review meetings.

Results of Reviews Conducted in 2016

Figure 1 (2) – Results of Reviews Conducted in 2016

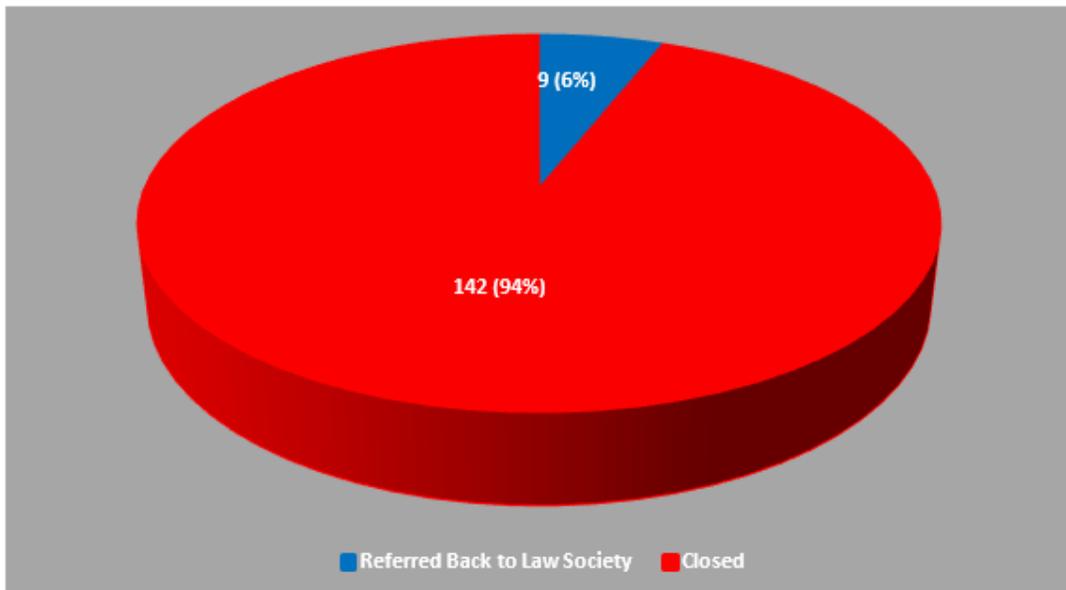


Figure 1 (2), above, reflects the results of the 151 decisions rendered by the Commissioner for all files reviewed in 2016.

Of the 151 decisions rendered, nine files (6%) were referred back to the Law Society. In seven of these files, the Commissioner did not find the Law Society's decision to close the file to be reasonable and recommended further action pursuant to subsection 7 (2) (b) of By-Law 11. In two files, while the Commissioner found the Law Society's decision to close reasonable, he referred the files back to the Law Society on the basis of significant fresh evidence received, pursuant to subsection 7 (1) of By-Law 11.

Results of Reviews Conducted in 2015

Figure 1 (3) – Results of Reviews Conducted in 2015

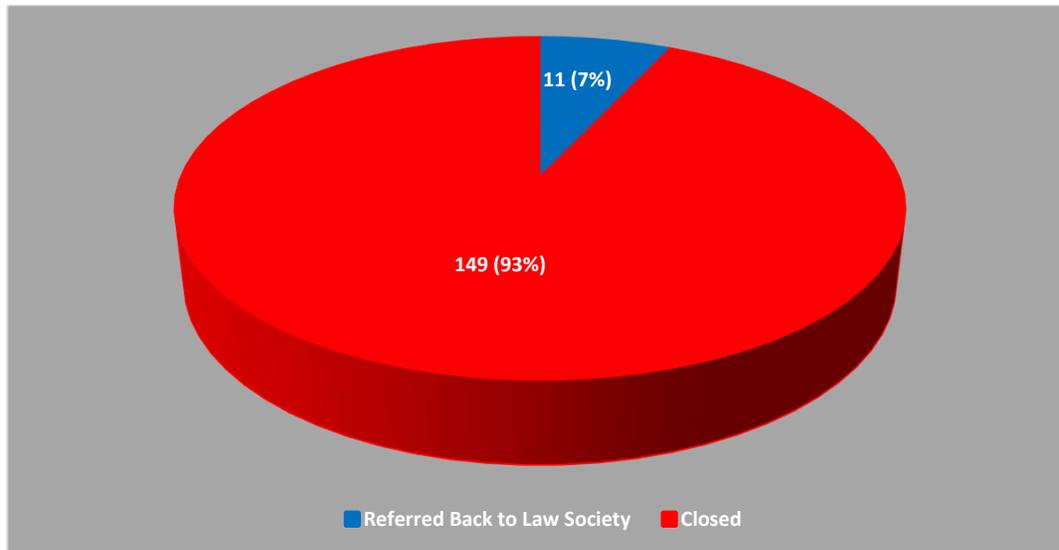
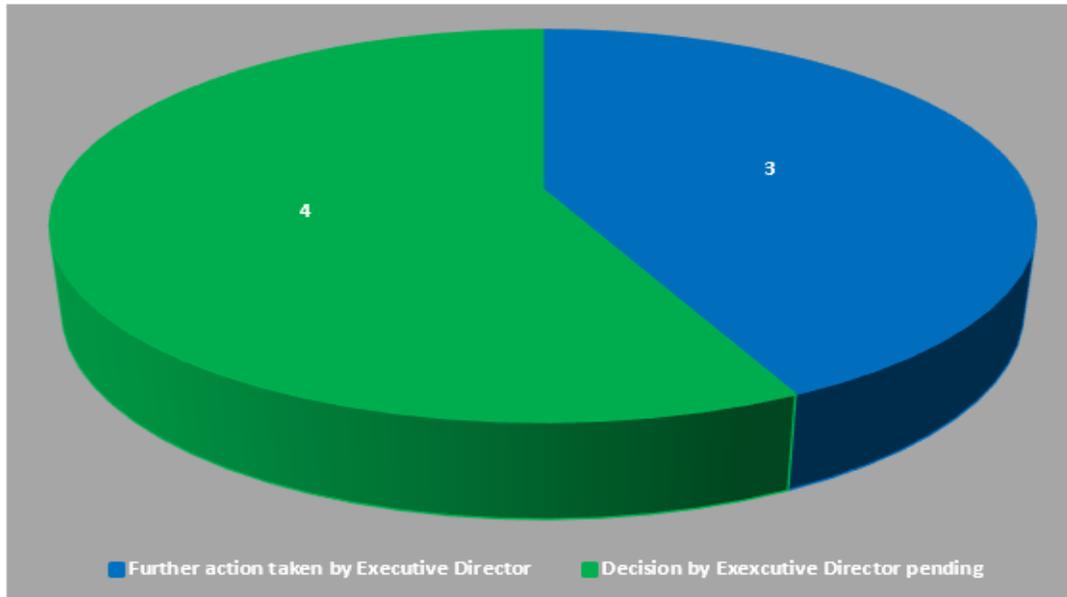
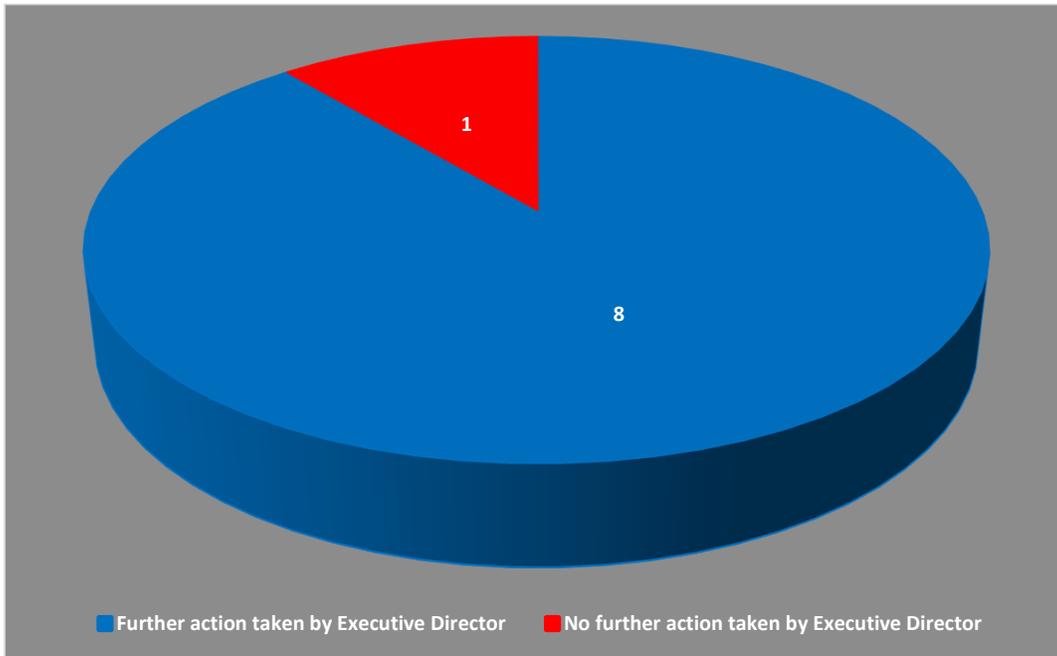


Figure 1 (3), above, reflects the results of the 160 decisions rendered by the Commissioner for reviews conducted in 2015.

Of the 160 decisions rendered, 11 files (7%) were referred back to the Law Society. In each of these files, the Commissioner did not find the Law Society’s decision to close the file to be reasonable and recommended further action pursuant to subsection 7 (2) (b) of By-Law 11. In three files, not reflected in Figure 1 (3), above, the Commissioner was satisfied that each decision to close was reasonable but sent each matter back after identifying Law Society practice and process issues.

Executive Director's Response to Files Referred Back to the Law Society for Reviews Conducted in 2017*Figure 2 (1) – Executive Director's Response to Files Referred Back in 2017*

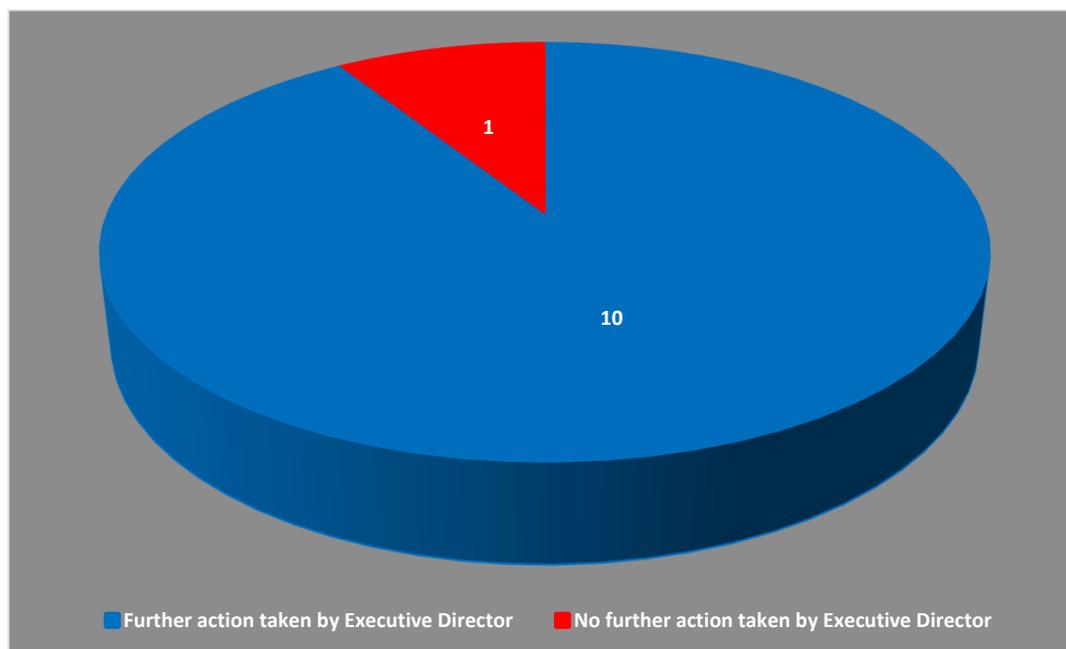
In 2017, of the seven files referred back by the Commissioner to the Law Society, the Executive Director agreed to take action on the recommendations made by the Commissioner in three of those files (43%). Decisions on the remaining four files (57%) were pending as of December 31, 2017.

Executive Director's Response to Files Referred Back to the Law Society for Reviews Conducted in 2016*Figure 2 (2) – Executive Director's Response to Files Referred Back in 2016*

In 2016, of the nine files referred back by the Commissioner to the Law Society, the Executive Director agreed to take action on the recommendations made by the Commissioner in eight of those files (89%) and declined to take further action on one file (11%).

Executive Director's Response to Files Referred Back to the Law Society for Reviews Conducted in 2015

Figure 2 (3) – Executive Director's Response to Files Referred Back in 2015



In 2015, of the 11 files that were referred back by the Commissioner to the Law Society, the Executive Director agreed to take further action on 10 of the files (91%) and declined to take further action on one file (9%).

E. Age Tracking of Files Closed in 2017 with a Comparison of 2016 and 2015

What follows is statistical data regarding the average time it took to advance a file through the CRC process in 2017 compared to the 2016 and 2015 calendar years.

In-Person and Teleconference Reviews

Average Age	2017 (days)	2016 (days)	2015 (days)
Average age from the receipt of the request to the date the Commissioner's decision was released	496	374	319
(a) Average age from the date the request for a review was received to the date the Professional Regulation Division (PRD) was notified of the request	2	6	3
(b) Average age from the date that PRD was notified of the request to the date the document books were received in the Office of the Commissioner	204	200	126
(c) Average age from the date the document books were received to the date the review meeting was first scheduled	13	12	23

(d) Average age from the date the review meeting was first scheduled to the date the review meeting was held	139	87	90
(e) Average age from the date the review meeting was held to the date the Commissioner 's decision was released	139	69	76

In-Writing Reviews

Average Age

	2017 (days)	2016 (days)	2015 (days)
Average age from the receipt of the request to the date the Commissioner's decision was released	498	410	327
(a) Average age from the date the request for review was received to the date PRD was notified of the request	1	6	7
(b) Average age from the date that PRD was notified of the request to the date the document books were received in the Commissioner's office	186	202	128
(c) Average age from the date the document books were received to the date the Commissioner 's decision was released	310	202	194

Active Inventory as of December 31, 2017

There were 198 files in CRC's active inventory as of December 31, 2017, with the following status:

- 31 files had been scheduled for review in 2018.
- 22 files were awaiting review materials from the Law Society prior to being scheduled.
- 68 files were being held in abeyance⁵.
- 77 decisions on files reviewed in 2017 were pending.

⁵ This number does not include those files closed by the Intake & Resolution Department where a review was not offered, and the complainant has requested a review.

F. Commissioner's Observations and Recommendations

As I reflect on the past year and the end of my two terms as Commissioner, I am grateful for having had the opportunity to serve in this important public service role and to work with a passionate and dedicated group of professionals in fulfilling the mandate of this office.

While the work we do is challenging, it is also highly rewarding.

A Chance to Be Heard

Every complainant who seeks a review has had a negative experience with a licensee and, having complained about that licensee's conduct, is often unhappy and frustrated with the way in which the Law Society has handled their complaint. For many complainants, the review process presents a last opportunity to tell their story. With this in mind, we are sensitive to the expectations that complainants bring to the review process and we do our best to ensure every complainant understands the process and the scope of my jurisdiction. Most importantly, we afford every complainant a full opportunity to voice their concerns and be heard.

In 2017, the in-person review meeting format remained the preferred review option for complainants. For most complainants, this is the first opportunity to meet with someone face-to-face after having gone through what is generally a paper-driven investigation process at the Law Society. However, we have also noticed an uptick in the popularity of the teleconference format year over year in the past three years and a flattening of the demand for reviews based on the written material.

While conducting review meetings in person or by teleconference can be more labour and time intensive, I find these formats more rewarding and, based on the growing demand, it is clear that complainants value the opportunity for a conversation over a paper review. In addition, review meetings conducted in person (or by teleconference) often afford the Commissioner with a valuable opportunity to discuss the distinction between issues of negligence and professional misconduct, a distinction that most lay people find difficult to understand.

Recommendation:

With increased interest in the teleconference review format option, I suggest exploring videoconferencing technology as a further option. Available technology is accessible and affordable and may present an enhanced experience for those who would like an in-person meeting but, due to travel distance and/or cost, are unable to attend in person.

Changes in 2017

We witnessed a decrease in requests for review in 2017. This decrease may, in part, be due to the decision of Enforcement to dispense with sharing both the form and information sheet, which had been provided in previous years with each closing letter. Enforcement continues to advise complainants of the CRC process and to provide a link to the Law Society's website in its closing letters to complainants. In addition, the CRC made arrangements to have the form and information sheet available on the Law Society's website. However, some complainants do not have access to computers and/or the internet, while others do not have the technical ability to avail themselves of this information online.

In addition, staff of Intake & Resolution are not offering complainants the option to request a review by the Commissioner when they close a file. As indicated earlier in this Report, traditionally those files closed by Intake were not eligible for review by the Commissioner. In accordance with subsection 4 (1) of By-Law 11, files in which the regulatory issues have not been considered on their merits are viewed to be beyond the Commissioner's jurisdiction. However, the process in Intake & Resolution, particularly in the resolution stream, often involves obtaining oral and/or written representations from the licensee. Arguably, all files closed by Intake & Resolution in which the Law Society obtains the licensee's representations, either orally or in writing, may be eligible for review, on the basis that "the merits of the complaint have been considered" within the meaning of subsection 4 (1) of By-Law 11.

Recommendations:

I recommend that the Law Society reinstate the practice of including the form and information sheet in all closing letters to complainants while continuing to make these documents available on the Law Society website, to ensure that all complainants, regardless of means and technical ability, are fully informed about the review process and are able to engage it.

In the 2016 Annual Report I recommended that the Law Society explore the implications of the reorganization on the requirements of By-Law 11. I have been advised by the Law Society's Acting Executive Director of PRD (hereinafter referred to as the "Acting ED") that consideration of this issue is ongoing. In my view, a decision on eligibility for review of those matters closed by Intake & Resolution should be an urgent priority.

Outreach with the Professional Regulation Division

Over the past four years, I have had the opportunity to engage those in the Executive Director's role in dialogue regarding systemic concerns I have identified during the course of review meetings. I have offered feedback that has been welcomed and put into action. Feedback that has been acted upon includes the following:

- Providing complainants with an information sheet that describes and clarifies the complaints process, and assists complainants in understanding the Law Society's investigation process
- Providing complainants with a more fulsome explanation of the difference between professional misconduct and negligence in all Law Society communications
- Establishing more consistent standards in closing letters issued by PRD investigators

Unfortunately, due to changes at the Executive Director level over the past three years, ongoing dialogue has become more difficult, making the implementation of recommendations more challenging. I recently had the opportunity to meet with the Acting ED and I came away from that discussion heartened by the interest she showed in the feedback I offered.

Recommendations:

I encourage the Acting ED to re-establish regular quarterly meetings with the Commissioner.

During my recent meeting with the Acting ED I previewed the following recommendations, which I encourage her to carefully review and consider:

- **Improve depth of analysis and provide more robust reasons in closing letters**

While the PRD reorganization may have created greater consistency in the investigation process by streaming files for investigation through one stream, namely Enforcement, we have noted that the Law Society has moved towards providing complainants with far shorter closing letters. It is my view that the new letter format often results in a product that is short on an analysis of the issues and the reasons supporting the conclusions reached in the investigation.

- **Greater transparency and consistency in the investigation process**

I continue to encourage greater transparency and consistency in the investigation process. In the 2015 Annual Report, I suggested that the Law Society do more to keep complainants informed about important aspects of the investigation process and developments that take place during the course of an investigation. While I have seen some improvement, this area remains a concern. I would urge the Law Society to consider the following refinements in the interests of achieving increased transparency and consistency, as well as continuing to build trust and credibility in the investigation process.

- Communicate investigation processes and procedures to the complainant at the outset of the investigation, including investigation methodology, stages and forecasted timelines for the investigation process, information gathering techniques employed by investigators (including how and when third party evidence is tendered) and the complainant's and licensee's roles in the investigation
- Establish and publish clear and consistent process protocols for sharing of licensee representations by the investigator with complainants based on the fundamental principle that complainants should be entitled to receive and respond to a licensee's response to the complaint, with the extent to which it is shared - either in full, in part (through redaction), or by way of a detailed summary - dependent upon reasonably raised confidentiality or sensitivity concerns
- Establish and publish clear and consistent process protocols for the submission of evidence by third party witnesses
- Create protocols for internal file transfers between investigators and ensure timely notification of complainants in the event of a transfer

- **Consider the use of the Commissioner's complaints resolution function**

As discussed earlier in this Report, By-Law 11 provides the Commissioner with two distinct functions: complaints resolution and complaints review. Section 9 (1) sets out parameters for the discretionary referral of a complaint by the Law Society for attempted resolution. However, to date, the Commissioner has not been called upon to perform the complaints resolution function. There are times when it is clear that a complainant is seeking a resolution to their complaint that would lend itself to a mediation process involving the licensee and complainant. During the course of my tenure, I have suggested the early identification of files that may be suitable for mediation and the development of a clear process for referral. I encourage the development and utilization of this process within the mandate of the Commissioner's office.

I am mindful that there are a number of outstanding issues that would have to be addressed prior to utilizing the resolution function, including who would serve in the Commissioner's role in the event the resolution function is exercised, a resolution is not achieved and the matter proceeds through an investigation after which the complainant seeks an independent review.

- **Provide licensees and Law Society staff with additional training, support and tools to better equip them to work with members of the public with disabilities**

Over the past year, I addressed at least two complaints in which the complainants were suffering from identifiable disabilities, including diagnoses of PTSD and ADHD. In each case, the complainant expressed frustration that the licensee, who was the subject of their

complaint, and the Law Society employee, who investigated the complaint, were inadequately equipped to recognize their disabilities and offer appropriate accommodation and assistance. Having met in person with these complainants through the review process, it was clear that this frustration was a driving force behind each regulatory complaint. It was also apparent that the investigator's inability, in each case, to recognize the existence of the disability and to effectively address it during the course of the investigation served to heighten the complainant's anxiety and frustration. In particular, with regard to the investigation process followed in each complaint, it was apparent that the traditional in-writing approach was inadequate and a source of great anxiety, stress and frustration for each complainant, and that an in-person approach to information gathering would have been far more effective.

I acknowledge that the Law Society already does an excellent job of delivering training to licensees and PRD staff in this area. However, I recommend additional training and support for both licensees and PRD staff to better equip them with tools to effectively recognize and appropriately respond to those with disabilities.

Further, armed with these tools, I am hopeful that the Law Society will see fewer complaints from those with disabilities for the reasons I have outlined above and, in cases where complaints are submitted and investigated, I am optimistic that the level of satisfaction experienced by complainants with disabilities with the Law Society's investigation process will be increased.

- **Provide additional cultural sensitivity training for both licensees and Law Society staff**

In one complaint I reviewed this past year, the complainant raised concerns that the licensee who was the subject of the complaint had exhibited signs of "Islamophobia" in his dealings with the complainant, a former client. The complainant then alleged that these concerns were exacerbated by the Law Society investigator when he repeated the same error that was the initial source of the complainant's concern in his closing letter to the complainant.

Cultural insensitivity has not presented as a widespread issue in my time as Commissioner. I also appreciate that the Law Society is sensitive to these concerns and strives to provide cultural sensitivity training to its staff. However, even one complaint of this nature is a cause for concern, and I would encourage the Law Society to take a proactive approach to addressing this issue by offering additional training to licensees and PRD staff.

.....

In closing, with my departure and the appointment of a new Commissioner, I trust my recommendations will remain a priority and, going forward, the Law Society will maintain a responsive and thoughtful approach to feedback offered by the CRC regarding PRD's complaints process.

APPENDIX 1 - LAW SOCIETY ACT EXCERPTS

COMPLAINTS RESOLUTION COMMISSIONER

Appointment

[49.14 \(1\)](#) Convocation shall appoint a person as Complaints Resolution Commissioner in accordance with the regulations. 1998, c. 21, s. 21.

Restriction

[\(2\)](#) A bencher or a person who was a bencher at any time during the two years preceding the appointment shall not be appointed as Commissioner. 1998, c. 21, s. 21.

Term of office

[\(3\)](#) The Commissioner shall be appointed for a term not exceeding three years and is eligible for reappointment. 1998, c. 21, s. 21.

Removal from office

[\(4\)](#) The Commissioner may be removed from office during his or her term of office only by a resolution approved by at least two thirds of the benchers entitled to vote in Convocation. 1998, c. 21, s. 21.

Restriction on practice of law

[\(5\)](#) The Commissioner shall not engage in the practice of law during his or her term of office. 1998, c. 21, s. 21.

Functions of Commissioner

[49.15 \(1\)](#) The Commissioner shall,

- (a) attempt to resolve complaints referred to the Commissioner for resolution under the by-laws; and
- (b) review and, if the Commissioner considers appropriate, attempt to resolve complaints referred to the Commissioner for review under the by-laws. 1998, c. 21, s. 21.

Investigation by Commissioner

[\(2\)](#) If a complaint is referred to the Commissioner under the by-laws, the Commissioner has the same powers to investigate the complaint as a person conducting an investigation under section 49.3 would have with respect to the subject matter of the complaint, and, for that purpose, a reference in section 49.3 to an employee of the Society holding an office prescribed by the by-laws shall be deemed to be a reference to the Commissioner. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (1).

Access to information

[\(3\)](#) If a complaint is referred to the Commissioner under the by-laws, the Commissioner is entitled to have access to,

- (a) all information in the records of the Society respecting a licensee who is the subject of the complaint; and
- (b) all other information within the knowledge of the Society with respect to the subject matter of the complaint. 1998, c. 21, s. 21; 2006, c. 21, Sched. C, s. 48 (2).

Delegation

[49.16 \(1\)](#) The Commissioner may in writing delegate any of his or her powers or duties to members of his or her staff or to employees of the Society holding offices designated by the by-laws. 1998, c. 21, s. 21.

Terms and conditions

[\(2\)](#) A delegation under subsection (1) may contain such terms and conditions as the Commissioner considers appropriate. 1998, c. 21, s. 21.

Identification

[49.17](#) On request, the Commissioner or any other person conducting an investigation under subsection 49.15 (2) shall produce identification and, in the case of a person to whom powers or duties have been delegated under section 49.16, proof of the delegation. 1998, c. 21, s. 21.

Confidentiality

[49.18 \(1\)](#) The Commissioner and each member of his or her staff shall not disclose,

- (a) any information that comes to his or her knowledge as a result of an investigation under subsection 49.15 (2); or
- (b) any information that comes to his or her knowledge under subsection 49.15 (3) that a bencher, officer, employee, agent or representative of the Society is prohibited from disclosing under section 49.12. 1998, c. 21, s. 21.

Exceptions

[\(2\)](#) Subsection (1) does not prohibit,

- (a) disclosure required in connection with the administration of this Act, the regulations, the by-laws or the rules of practice and procedure;
- (b) disclosure required in connection with a proceeding under this Act;
- (c) disclosure of information that is a matter of public record;
- (d) disclosure by a person to his or her counsel; or
- (e) disclosure with the written consent of all persons whose interests might reasonably be affected by the disclosure. 1998, c. 21, s. 21.

Testimony

[\(3\)](#) A person to whom subsection (1) applies shall not be required in any proceeding, except a proceeding under this Act, to give testimony or produce any

document with respect to information that the person is prohibited from disclosing under subsection (1). 1998, c. 21, s. 21.

Decisions final

[49.19](#) A decision of the Commissioner is final and is not subject to appeal. 1998, c. 21, s. 21.

Appendix 2

BY-LAW 11

Made: May 1, 2007

Amended: June 28, 2007

September 20, 2007 (editorial changes)

October 25, 2007 (editorial changes)

February 21, 2008

April 24, 2008

October 30, 2008

January 29, 2009

October 28, 2010

April 25, 2013

May 30, 2013

March 4, 2014

June 26, 2014

February 23, 2017

May 25, 2017

REGULATION OF CONDUCT, CAPACITY AND PROFESSIONAL COMPETENCE

PART I

COMPLAINTS RESOLUTION COMMISSIONER

GENERAL

Definitions

1. In this Part,

“complainant” means a person who makes a complaint;

“complaint” means a complaint made to the Society in respect of the conduct of a licensee;

“Commissioner” means the Complaints Resolution Commissioner appointed under section 49.14 of the Act;

“reviewable complaint” means a complaint that may be reviewed by the Commissioner under subsection 6 (1).

Provision of funds by Society

2. (1) The money required for the administration of this Part and sections 49.15 to 49.18 of the Act shall be paid out of such money as is budgeted therefor by Convocation.

Restrictions on spending

(2) In any year, the Commissioner shall not spend more money in the administration of this Part and sections 49.15 to 49.18 of the Act than is budgeted therefor by Convocation.

Annual report

3. Not later than March 31 in each year, the Commissioner shall submit to the Professional Regulation Committee a report upon the affairs of the office of the Commissioner during the immediately preceding year, and the Committee shall lay the report before Convocation not later than at its regular meeting in June.

REVIEW OF COMPLAINTS

Reviewable complaints

4. (1) A complaint may be reviewed by the Commissioner if,
- (a) the merits of the complaint have been considered by the Society;
 - (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
 - (c) the complaint has not been previously reviewed by the Commissioner; and
 - (d) the Society has notified the complainant that it will be taking no further action in respect of the complaint.

Same

(2) A complaint may not be reviewed by the Commissioner to the extent that, in the opinion of the Commissioner, it concerns only the following matters:

- 1. Quantum of fees or disbursements charged by a licensee to a complainant.
- 2. Requirements imposed on a licensee under By-Law 9 [Financial Transactions and Records].
- 3. Negligence of a licensee.

Interpretation: “previously reviewed”

(3) For the purposes of this section, a complaint shall not be considered to have been previously reviewed by the Commissioner if the complaint was referred back to the Society for further consideration under subsection 7 (1).

Right to request referral

5. (1) A complainant may request the Society to refer to the Commissioner for review a reviewable complaint.

Request in writing

(2) A request to refer a reviewable complaint to the Commissioner for review shall be made in writing.

Time for making request

(3) A request to refer a reviewable complaint to the Commissioner for review shall be made within 60 days after the day on which the Society notifies the complainant that it will be taking no further action in respect of the complaint.

When notice given

(4) For the purposes of subsection (3), the Society will be deemed to have notified the complainant that it will be taking no further action in respect of the complaint,

- (a) in the case of oral notification, on the day that the Society notified the complainant; and
- (b) in the case of written notification,
 - (i) if it was sent by regular lettermail, on the fifth day after it was mailed, and
 - (ii) if it was faxed, on the first day after it was faxed.

Referral of complaints

6. (1) The Society shall refer to the Commissioner for review every reviewable complaint in respect of which a complainant has made a request under, and in accordance with, section 5.

Notice

(2) The Society shall notify in writing the licensee who is the subject of a complaint in respect of which a complainant has made a request under, and in accordance with, section 5 that the complaint has been referred to the Commissioner for review.

Fresh evidence

7. (1) When reviewing a complaint that has been referred to the Commissioner for review, if the Commissioner receives or obtains information, which in the Commissioner's opinion is significant, about the conduct of the licensee who is the subject of the complaint that was not received or obtained by the Society as a result of or in the course of its consideration of the merits of the complaint, the Commissioner shall refer the information and complaint back to the Society for further consideration.

Disposition of complaint referred for review

(2) After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall,

- (a) if satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- (b) if not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

Disposition of complaint referred for review: notice

(3) The Society shall notify in writing the licensee who is the subject of a complaint reviewed by the Commissioner of the Commissioner's disposition of the complaint.

Referral back to Society: notice

(4) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, the Society shall consider the recommendation and notify in writing the Commissioner, complainant and licensee who is the subject of the complaint of whether the Society will be following the recommendation.

Same

(5) If the Commissioner refers a complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and the Society determines not to follow the recommendation of the Commissioner, the Society shall provide the Commissioner, complainant and licensee who is the subject of the complaint with a written explanation for the determination.

Procedure

8. (1) Subject to this Part, the procedures applicable to the review of a complaint referred to the Commissioner shall be determined by the Commissioner.

Meeting

(2) The Commissioner shall, where practicable, meet with each complainant whose complaint has been referred to the Commissioner for review, and the Commissioner may meet with the complainant by such telephone, electronic or other communication facilities as permit all persons participating in the meeting to communicate with each other simultaneously and instantaneously.

Participation in review: Society

(3) Other than as provided for in subsections (5) and (6), or unless otherwise expressly permitted by the Commissioner, the Society shall not participate in a review of a complaint by the Commissioner.

Participation in review: licensee

(4) The licensee who is the subject of a complaint that has been referred to the Commissioner for review shall not participate in a review of the complaint by the Commissioner.

Description of consideration, etc.

(5) At the time that the Society refers a complaint to the Commissioner for review, the Society is entitled to provide the Commissioner with a description of its consideration of the complaint and an explanation of its decision to take no further action in respect of the complaint.

Requirement to answer questions

(6) The Commissioner may require the Society to provide information in respect of its consideration of a complaint that has been referred to the Commissioner for review and its decision to take no further action in respect of the complaint, and the Society shall provide such information.

RESOLUTION

Discretionary referral of complaints

9. (1) The Society may refer a complaint to the Commissioner for resolution if,
- (a) the complaint is within the jurisdiction of the Society to investigate;

- (b) the complaint has not been disposed of by the Proceedings Authorization Committee, Hearing Division or Appeal Division;
- (c) the complaint has not been referred to the Proceedings Authorization Committee;
- (d) no resolution of the complaint has been attempted by the Society; and
- (e) the complainant and the licensee who is the subject of the complaint consent to the complaint being referred to the Commissioner for resolution.

Parties

10. The parties to a resolution of a complaint by the Commissioner are the complainant, the licensee who is the subject of the complaint and the Society.

Outcome of Resolution

11. (1) There shall be no resolution of a complaint by the Commissioner until there is an agreement signed by all parties agreeing to the resolution.

No resolution

(2) If there is no resolution of a complaint by the Commissioner, the Commissioner shall so notify in writing the parties and refer the complaint back to the Society.

Enforcement of resolution

(3) A resolution of a complaint by the Commissioner shall be enforced by the Society.

Confidentiality: Commissioner

12. (1) Subject to subsection (2), the Commissioner shall not disclose any information that comes to the Commissioner's knowledge during the resolution of a complaint.

Exceptions

(2) Subsection (1) does not prohibit disclosure required of the Commissioner under the Society's rules of professional conduct.

Without prejudice

(3) All communications during the resolution of a complaint by the Commissioner and the Commissioner's notes and record of the resolution shall be deemed to be without prejudice to any party.

Procedure

13. Subject to this Part, the procedures applicable to the resolution of a complaint referred to the Commissioner shall be determined by the Commissioner.

Appendix 3

Request for Review by the Complaints Resolution Commissioner



Before you complete the request form, please read the "Request for Review by the Complaints Resolution Commissioner Information Sheet."

If you want a review, you must make your request for a review **in writing** within **60 days** of the Law Society's notification (the closing letter you received from Law Society staff) that no further action will be taken with respect to your complaint. If you want a review for more than one complaint, please complete and send a separate Request for Review Form for each complaint.

To submit a request for a review, please complete this form online or send it by facsimile, email or regular mail. Our contact information is as follows:

Office of the Complaints Resolution Commissioner
393 University Avenue, Suite 515, Toronto, ON, M5G 1E6
Fax: 416-947-5213 Email: complaintsreview@luc.on.ca

If you have any questions about your request for a review, please call the Office of the Complaints Resolution Commissioner at 416-947-3442 or 1-866-880-9480.

I. INFORMATION ABOUT YOU (THE COMPLAINANT)

Salutation: Mr. Ms. Mrs. Dr. Other (specify): _____

First Name: _____ Last Name: _____

Home Phone Number: _____ Cell Phone Number: _____

Fax Number: _____ Email: _____

Please indicate where you want the Document Book (mailed via XpressPost) and other mailed communications about this review to be sent:

Address: _____ Unit/Apt.: _____

City: _____ Province: _____ Postal Code: _____

What is the best way to contact you from Monday to Friday between the hours of 8:30 a.m. and 4:30 p.m. (select one)?

Telephone

Facsimile

Email

Are you a lawyer or licensed paralegal? Yes No

Request for Review by the Complaints Resolution Commissioner



2. DETAILS OF LAW SOCIETY COMPLAINT MATTER

LSUC File Number: _____

- Name of Lawyer/Paralegal: _____
- Name of Law Society's Investigator: _____
- Date of Law Society's letter notifying you that the file is being closed: _____
- What is your relationship to the lawyer/paralegal?
 Client Opposing lawyer or paralegal Other (specify): _____
- What area of law/legal services does your complaint relate to?
 Real Estate Civil Litigation Corporate/Commercial/Business Estates/Wills
 Matrimonial/Family Administrative/Immigration Criminal Other (specify): _____
- Are you acting under a Power of Attorney or some other form of authorization? Yes No

If yes, please send supporting documentation in writing to this office.

List any other complaints you have submitted which are still under investigation with the Law Society or related to this complaint:

File Number(s)	Name of Lawyer(s)/Paralegal(s)
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Appendix 4

Office of the Complaints Resolution Commissioner


INFORMATION SHEET

This information sheet will help you request a review by the Complaints Resolution Commissioner (the Commissioner).

REQUEST FOR REVIEW:

The Commissioner, on your request, will do an independent review of the Law Society's investigation and the decision to close your complaint file. If you want to have the Law Society's decision to close your complaint file reviewed by the Commissioner, please complete the attached Request for Review form. Please return the form to the Office of the Complaints Resolution Commissioner following the instructions at the end of the Request Form. **A request for review by the Commissioner must be made in writing within 60 days of the Law Society's notification (the closing letter you received from Law Society staff) that no further action will be taken with respect to your complaint.**

THE ROLE OF THE COMPLAINTS RESOLUTION COMMISSIONER:

After reviewing a complaint that has been referred to the Commissioner for review, the Commissioner shall:

- If satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, so notify in writing the complainant and the Society; or
- If not satisfied that the Society's consideration of the complaint and its decision to take no further action in respect of the complaint is reasonable, refer the complaint back to the Society with a recommendation that the Society take further action in respect of the complaint, or the licensee who is the subject of the complaint, and so notify in writing the complainant.

THE COMPLAINTS RESOLUTION COMMISSIONER CANNOT:

- Make a finding of professional misconduct;
- Impose disciplinary penalties;
- Make a finding of professional negligence;
- Award payment of money or other compensation for financial losses;
- Direct a licensee (lawyer or licensed paralegal) to refund fees or disbursements; or
- Conduct a new investigation.

MEETING WITH THE COMPLAINTS RESOLUTION COMMISSIONER:

As part of the review process, you may be invited to meet with the Commissioner in person or to participate in a conference call. These sessions are informal and involve a discussion of your complaint and the concerns you have with the Law Society's decision to close your file. Your meeting will be scheduled for one hour.

The Commissioner will consider your preference and decide the most appropriate manner for the review meeting to proceed. The Commissioner may also review your file based on the written material only. A review based on the written material only may result in the review being completed sooner.

The Commissioner also has in person meetings, approximately twice per year, in London and Ottawa. If you live in either of these areas and want your matter reviewed by telephone conference instead of an in person meeting, the review by the Commissioner may take place sooner.

Most people prefer to participate in the review meeting on their own. However, you may bring a friend, family member or a legal representative to your review meeting.

Counsel to the Commissioner is a lawyer and will be at the Review Meeting to assist the Commissioner and respond to any legal questions raised by the Commissioner. The Counsel's role is restricted to providing assistance to the Commissioner and he or she cannot give you legal advice.

Neither the lawyer/licensed paralegal who was the subject of your complaint nor the Law Society investigator, will be present at the meeting or during the conference call.

Office of the Complaints Resolution Commissioner



INFORMATION SHEET

SCHEDULING OF THE REVIEW MEETING:

Your meeting with the Commissioner will be scheduled as soon as possible. However, it may take several months for your review to take place. We appreciate and thank you for your patience.

If you cannot attend the meeting on the scheduled date or have decided not to proceed with your complaint, please notify the Office of the Complaints Resolution Commissioner as soon as possible, so that the time set aside for your meeting can be used productively. If you want your meeting date to be adjourned/rescheduled, the Commissioner may request supporting documentation explaining why you cannot attend the meeting.

PROVIDING NEW INFORMATION:

To assist you at the review meeting, the Office of the Commissioner will send you a Document Book and correspondence. The Document Book will be sent to you when your meeting date is scheduled. The Commissioner and the Counsel to the Commissioner will also have a copy and will review the Document Book before the meeting.

If you send new material concerning your complaint or you submit written submissions to the Commissioner, please send this material within one month of sending in your Request for Review form. **Please do not send original documents.**

Do not resend copies of documents which have already been provided to the Law Society, as the information contained in the Law Society's file will be provided to the Commissioner in advance of the review meeting. **Resending copies of documents or repeating information already provided to the Law Society may delay the review.**

DECISION OF THE COMPLAINTS RESOLUTION COMMISSIONER:

The Commissioner will send you the decision in writing within several weeks of when the review has been conducted. If the Commissioner agrees with the Law Society's decision to close the complaint, the Commissioner's decision concludes the matter. There are no further reviews and the decision is final.

FOR MORE INFORMATION:

If you have any questions about how to request a review by the Commissioner, please contact the Office of the Complaints Resolution Commissioner at the following and we will be pleased to help you:

**393 University Avenue
Suite 515
Toronto, ON
M5G 1E6**

Telephone: 416-947-3442

Toll-Free Number: 1-866-880-9480

Fax: 416-947-5213

Email: complaintsreview@lsuc.on.ca

Please advise us if, given your needs, you require the Office of the Complaints Resolution Commissioner communications in an alternate format that is accessible or if you require other arrangements to make our services accessible to you.