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 lso.ca/advertising-fee-arrangements.

Advertising and Fee Arrangements Issues Working Group

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Mandatory Standard Contingency Fee Agreement (Based on Law Society Recommendations and Current Legislation)
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.
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
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.
[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
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]
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
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
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
| Lawyer or Paralegal Name | Witness Name |
Contingency Fee Retainer Agreement
Short-Form Disclosure Document

[Firm Name, Address, Telephone Number, Email]

Key Aspects of the Contingency Fee Retainer Agreement

<table>
<thead>
<tr>
<th>Name of client(s)</th>
<th></th>
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<tbody>
<tr>
<td>Retainer Type</td>
<td>Choose from:</td>
</tr>
<tr>
<td></td>
<td>Sole Representation</td>
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<tr>
<td></td>
<td>Joint Representation</td>
</tr>
<tr>
<td>Legal services covered</td>
<td>Insert general description of the matter</td>
</tr>
<tr>
<td>Other related legal issues not covered by this retainer</td>
<td></td>
</tr>
<tr>
<td>Appeals included in the legal services</td>
<td>Choose from:</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
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<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Contingency Fee</td>
<td>[Insert percentage or other agreed to fee amount]</td>
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<tr>
<td>Referral Fee</td>
<td>No</td>
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<tr>
<td></td>
<td>Yes</td>
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<td>- If Yes, insert referral fee amount.</td>
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<td></td>
<td>- If Yes, insert referral fee amount recipient.</td>
</tr>
<tr>
<td>Permitted Disbursements</td>
<td>Select:</td>
</tr>
<tr>
<td></td>
<td>1. Client Responsible for permitted disbursements</td>
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<td>2. Law firm initially pays permitted disbursements, and is reimbursed only if there is recovery</td>
</tr>
<tr>
<td></td>
<td>3. Law firm initially pays permitted disbursements, and is reimbursed regardless of whether there is recovery</td>
</tr>
</tbody>
</table>
Mandatory Standard Contingency Fee Agreement

(Based on Law Society recommendations and proposed legislative amendments)
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.
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]
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 [½ 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 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;
(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
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.]
[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
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,
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]
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 __________________________
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)**: $3,250.00
- **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
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 Award + [$30,000] Costs) X [20%] + HST = [$26,000] + 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.

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Award (damages, benefits etc.)</td>
<td>[$100,000.00]</td>
</tr>
<tr>
<td>Costs (Partial indemnity basis)</td>
<td>[$20,000.00]</td>
</tr>
<tr>
<td>Permitted Disbursements</td>
<td>[$15,000.00]</td>
</tr>
<tr>
<td>HST (on costs and disbursements)</td>
<td>[$3,900.00]</td>
</tr>
<tr>
<td>Total</td>
<td>[$133,900.00]</td>
</tr>
</tbody>
</table>

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:

($[100,000] Award + [$20,000] Costs X [20%]) + HST = [$24,000] + HST

Total fee, including HST = [$27,120]

and

ii) Charging a fee based on the following calculation:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Partial indemnity costs</td>
<td>[$20,000.00]</td>
</tr>
<tr>
<td>Additional 2/3 of partial indemnity cost (2/3 of $20,000)</td>
<td>[$13,333.00]</td>
</tr>
<tr>
<td>Total fee, excluding HST</td>
<td>[$33,333.33]</td>
</tr>
<tr>
<td>HST on fee</td>
<td>[$4,333.33]</td>
</tr>
<tr>
<td>Total fee, including HST</td>
<td>[$37,666.66]</td>
</tr>
</tbody>
</table>

In this case, we would charge the higher amount between the two options, for total fees of [$37,666] including HST.
Contingency Fee Retainer Agreement  
Short-Form Disclosure Document

[Firm Name, Address, Telephone Number, Email]

Key Aspects of the Contingency Fee Retainer Agreement

<table>
<thead>
<tr>
<th>Name of client(s)</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Retainer Type</td>
<td>Choose from:</td>
</tr>
<tr>
<td></td>
<td>Sole Representation</td>
</tr>
<tr>
<td></td>
<td>Joint Representation</td>
</tr>
<tr>
<td>Legal services covered</td>
<td>Insert general description of the matter</td>
</tr>
<tr>
<td>Other related legal issues <em>not</em> covered by this retainer</td>
<td></td>
</tr>
<tr>
<td>Appeals included in the legal services</td>
<td>Choose from:</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>No</td>
</tr>
<tr>
<td>Contingency Fee</td>
<td>[Insert percentage or other agreed to fee amount]</td>
</tr>
<tr>
<td>Referral Fee</td>
<td>No</td>
</tr>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td></td>
<td>- If Yes, insert referral fee amount.</td>
</tr>
<tr>
<td></td>
<td>- If Yes, insert referral fee amount recipient.</td>
</tr>
<tr>
<td>Permitted Disbursements</td>
<td>Select:</td>
</tr>
<tr>
<td></td>
<td>1. Client Responsible for permitted disbursements</td>
</tr>
<tr>
<td></td>
<td>2. Law firm initially pays permitted disbursements, and is reimbursed <em>only</em> if there is recovery</td>
</tr>
<tr>
<td></td>
<td>3. Law firm initially pays permitted disbursements, and is reimbursed <em>regardless</em> of whether there is recovery</td>
</tr>
</tbody>
</table>
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
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](http://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.
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
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.
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.

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.

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
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
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.
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
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
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.
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.
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.

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 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:
• 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.


[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
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 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]
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.
(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
A 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.