

Using the Standard Form Contingency Fee Agreement

Markup

Instructions to the legal drafter are in *[red italic type, inside square brackets]*. Erase instructions as you complete each section of the template.

Square brackets around black type indicate that you need to fill in information, for example:

[Date]

[Client name]

Selecting, erasing and changing text

When the instructions tell you to select optional language, erase any other optional language that does not apply.

Section numbering

The sections of the template are numbered. If you delete a section because it is not relevant to this matter, the sections will renumber automatically.

Try to make your page breaks at the end of sections to help your client absorb each topic without interruptions.

Body type

The body type is 13-point Calibri with 6 points of space between paragraphs.

Contingency Fee Agreement

[Date]

This agreement is between:

[Firm name]

[Firm address]

[Firm telephone]

[Firm email]

[Firm fax]

And

[Client name]

[If client is a person under disability as defined in the Rules of Civil Procedure, represented by a litigation guardian, enter the client name followed by the phrase “as represented by [his/her] litigation guardian, [litigation guardian name].”]

[Client address]

[Client telephone]

[Client email]

[Add name and contact information for any additional clients covered by the agreement.]

Regarding:

[Insert brief general description of the matter.]

1. Before you sign

You have been given a copy of **Contingency fees: What you need to know**. Read the guide first. Then, take as much time as you need to read this agreement.

[Select if client is not a party under disability as defined in the Rules of Civil Procedure:]

Do not sign until you feel you have answers to all of your questions and you have decided to proceed.

[Select if client is a party under disability as defined in the Rules of Civil Procedure, represented by a litigation guardian entering into this agreement:]

A judge must approve this agreement. We are required to ensure that this approval happens either before the agreement is finalized or as part of the court's approval of a settlement agreement or a consent judgment.

Do not sign until you feel you have answers to all of your questions and you have decided to proceed.

2. Services we will provide under this agreement

You retain us on a contingency fee basis to *[Briefly describe the nature of the matter and the scope of the retainer.]*

You retain us to represent you: *[Select each bullet that applies. Erase what does not apply:]*

- through to settlement
- through to the end of your hearing
- through an appeal if you lose your case and decide to appeal.

You have the right to make all critical decisions about how we conduct this matter.

3. Services NOT covered by this agreement

[Delete Section 3 if it does not apply.]

We have discussed the following services and you have asked us not to take any action concerning them. That means they are **not** covered by this agreement:

- [service]
- [service]

[List in bullet form any legal courses of action related to the case but excluded from the agreement. The client may have a claim, for instance, in tort / for motor vehicle accident benefits / for long term disability / for CPP disability. Include any advice you gave, such as recommending they retain someone else, or reminding them of limitation periods.]

4. Other clients we are acting for in this matter

[Delete Section 4 if there are no other clients.]

We are also acting for:

[List clients:]

- [Client name]

- [Client name].

Conflicts of interest

[These clients have] [This client has] interests similar to yours. If a conflict of interest arises in future, and we cannot resolve it,

[Select what applies and join up sentence:]

we cannot continue to act for each of you.

we will continue to act for [client name] and will refer you to another legal professional.

[Include only if applicable:]

You are aware that we have been acting for [Name of client] and have a continuing relationship with this client. We have advised you to ask another legal professional for advice about this joint agreement before you sign it.

Sharing information among clients

We cannot treat information that you give us about this matter as confidential from other clients we are acting for in the same matter. If you share something and instruct us to keep it from another client, we may have to stop acting for you, or even end the entire agreement.

5. How you will pay for disbursements

To support your case, we may have to pay for items and services from third parties. For example, we may have to pay for court filing fees and the services of expert witnesses (such as medical experts). These payments are considered ‘disbursements’ because we paid for them on your behalf.

We have the right to be reimbursed for these disbursements as a first charge on any amount you recover under an award or settlement of the matter. However, Legal Aid Ontario may have priority over us if you have received legal aid services in this matter.

Generally, internal firm costs will not be charged as disbursements. For example, we will not treat the cost of other lawyers, paralegals, law clerks and administrative assistants, or any overtime, as disbursements to be charged to you separately. They are part of the legal services provided to you and as such, are covered by our contingency fee.

However, expenses approved by a court or tribunal or authorized by a regulation known as “Tariff A” are also considered disbursements, even if they are internal firm costs (Tariff A is part of the Rules of Civil Procedure).

[Select the paragraph that applies.]

[Client pays, whether they win or lose, when case concludes or retainer ends:]

Disbursements, including taxes, are not covered by the contingency fee. They are payable whether you win or lose. We will charge you for disbursements when your case concludes. If our agreement ends before then, we will bill you for all outstanding disbursements. We will charge interest on anything unpaid at [__%] after one month from when our final account statement is delivered to you.

[Add if more than one client:]

Each of you is responsible for ensuring that bills are paid in full.

[Client pays for disbursements directly to supplier:]

Disbursements, including taxes, are not covered by the contingency fee. They are payable whether you win or lose. You are responsible for paying all bills for disbursements.

[Add if more than one client:]

Each of you is responsible for ensuring that bills are paid in full.

[Client reimburses legal firm as expenses incurred:]

Disbursements, including taxes, are not covered by the contingency fee. They are payable whether you win or lose. We will bill you for disbursements as we incur them. We will charge interest on anything unpaid at [__%] after one month from when our account statement is delivered to you.

[Add if more than one client:]

Each of you is responsible for ensuring that bills are paid in full.

[Firm reimbursed only if there is an award or settlement:]

Under this agreement, we will pay for disbursements, including taxes, up front. You will not have to repay us if you lose your case. However if you receive a settlement or award, it may include an amount to help you repay us for disbursements. We will take money from this amount, plus any additional money from the settlement or award needed to cover disbursements. We will show these deductions from your settlement or award in our final account statement.

6. Costs

If you win or settle your case, you may receive ‘costs’ – that is, money to help you pay for legal fees. In most cases, costs pay only for part of a person’s legal expenses.

If you lose your case, a court or tribunal may order that you pay costs to the successful party on a ‘partial indemnity’ or ‘substantial indemnity’ basis. Partial indemnity typically means that you may have to pay between 60% and 80% of the successful party’s actual

costs. Substantial indemnity typically means that you may have to pay for 80% or more of the successful party's actual costs.

7. How we calculate your contingency fee

The fee that you will pay us for legal services is a percentage of the money you get as a settlement or award. It also applies to any amount you receive for costs if you win your case or any amount specified as costs as part of a settlement. The percentage **does not apply** to any amount you receive specifically to help you pay for disbursements and taxes.

[Select if the client is a claimant or plaintiff.]

Our contingency fee cannot be more than the amount that you recover as an award or settlement from the other side, including costs and excluding disbursements and taxes.

Your Fee

[Select if the contingency fee % is constant through all stages covered by the agreement:]

Your contingency fee will be [__%] of your settlement or award, plus HST.

[Partial contingency fees:

Select if this is a partial contingency fee arrangement with an hourly rate:]

You have agreed to pay us an hourly rate for legal services of [\$___] /hour, plus a contingency fee of [__%] if you receive a settlement or award. HST will be charged on our fees.

Select if this is a partial contingency fee arrangement with a flat rate:]

You have agreed to pay us a flat amount of [\$___] at the outset of your case, plus a contingency fee of [__%] if you receive a settlement or award. HST will be charged on our fees.

[Graduated contingency fees:

If the % is graduated, select the stages below that apply and erase all others. Adjust the stages and the percentage fees as needed to reflect this case and your firm's practices.]

IF	THEN
We settle your case before the examination for discovery (a meeting with the other side to share documents and ask questions)	The fee will be [__%] + HST
We settle your case after the examination for discovery but before the hearing	The fee will be [__%] + HST

IF	THEN
We settle your case before the settlement conference (a meeting to see if a mediated dispute can be achieved)	The fee will be [__%] + HST
We settle your case during the settlement conference	The fee will be [__%] + HST
We settle your case after the settlement conference but before the hearing	The fee will be [__%] + HST
We settle your case during the hearing but before judgment	The fee will be [__%] + HST
The [court] [tribunal] hears your case and orders that you receive an award	The fee will be [__%] + HST
We appeal the [court's] [tribunal's] decision and settle before the appeal is heard	The fee will be [__%] + HST
We win your appeal and the [court] [tribunal] orders that you receive an award	The fee will be [__%] + HST

[NOTE: See Appendix for optional formulas to adjust costs for legal fees in exceptional circumstances.]

8. How you will receive your settlement or award

You agree and direct that all of the money you recover through an award or settlement be sent to us. We will put it in a trust account for you. You also agree and direct that all funds claimed by us for legal fees, disbursements and taxes be paid out of the award or settlement. We will give you a detailed account statement showing:

- what amounts go into the settlement or award
- what we are keeping to cover our fees and outstanding disbursements
- what we are keeping to pay for HST
- how much you will receive.

[Select if the case may result in a structured settlement:]

The total amount that you will receive stays the same whether you take it all as a lump sum or take smaller amounts in regular payments.

9. Interim costs

Sometimes a court or tribunal awards money before the case ends to help with legal fees and disbursements. The money is called ‘interim costs’.

[Select if client receives some of the interim costs:]

Interim costs awarded for legal fees

If we settle or win your case, we will apply the interim costs already received to our fees on the final account statement.

If we do not settle or win your case, or the award or settlement is very low, the amount received in interim costs may turn out to be more than we are entitled to. We will pay the extra money to you.

[Select if the firm keeps the interim costs if case lost or award is low:]

Interim costs awarded for legal fees

If we settle or win your case, we will apply the interim costs already received to our fees on the final account statement.

If we do not settle or win your case, or the award or settlement is very low, we will keep the interim costs to cover some of the fees for our work on your case.

[Select if firm is paying for disbursements up front:]

Interim costs awarded for disbursements

If money is awarded for disbursements, we will use it to pay for disbursements incurred in your case.

[Select if client is paying for disbursements up front:]

Interim costs awarded for disbursements

If money is awarded for disbursements, we will give this money to you to reimburse you for some of your disbursements.

10. Your right to a review of your final account statement

If you feel that the final account statement is unreasonable, contact the Superior Court to ask for a review. You should do this within 30 days of receiving the final account statement. Here is the contact information for the Superior Court in your region:

[Insert contact information for Superior Court in your region.]

11. Ending this agreement before your case concludes

You are free to end our agreement at any time.

We can also end the agreement if our professional conduct rules require or permit us to do so.

If our agreement ends before your case concludes, you may still owe us for:

[Select what applies:]

- Disbursements that you are responsible for, plus taxes
- Our legal services, paid as hourly fees, up to the time the agreement ends, plus taxes.

We would collect this money from your settlement or award when your case concludes.

Our hourly fees:

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

We will give you written notice if our hourly fees increase.

12. No guarantee of success

We will act in your best interests. However, we cannot promise that your case will succeed.

13. Signing this agreement

Please contact us if there is anything in this agreement you still want to discuss before signing.

If you want us to proceed based on this agreement, please sign and date this document where it says 'client signature.'

Once the agreement is signed, we can agree to change it, but we must do so in writing. A court can also order changes to the agreement.

Client Name (Please print)

[Insert additional client signature lines as needed.]

Client or Litigation Guardian
Signature

Date

For [Name of Firm] *[Print
name of firm
representative.]*

Signature, for [Name of Firm]

Date

Appendix for legal drafters

Optional contingency fee calculations for exceptional situations

[You may incorporate the optional passage below into Section 7 if you anticipate that:

- *this case could result in a lengthy and complex hearing, **and***
- *a contingency fee percentage of the combined award and costs may not adequately compensate your time.*

Insert the passage right after you state your contingency fee percentage (or percentages, if graduated).

Note: *These options are not available for small claims court matters and tribunals that do not award costs on the basis of partial, substantial and full indemnity.]*

[Full or substantial indemnity]

Extra charges if the case goes through a hearing

If you receive money for **all or almost all** of your costs on a full or ‘substantial indemnity’ basis (80% or more), we will charge you either:

- a contingency fee of [__%] of the total award, including the costs
- or**
- an amount equal to all of the costs, but none of the rest of the award.

We will charge the amount that is the greater of these two options.

[Partial indemnity]

If you receive money for **part** of your costs on a ‘partial indemnity’ basis (typically between 60% and 80% of the actual costs), we can choose to charge you either:

- A.** a contingency fee of [__%] *[Insert agreed contingency fee agreement % of the total award including the costs.]*

or

- B.** an amount equal to all of the costs received,
plus

an additional amount of up to 2/3 of the costs. This amount may not exceed one half of the amount of **A.**

[Adjustments for mixed cost awards

In cases where costs are awarded on a mixed basis of full, substantial and partial indemnity, establish an amount that fairly reflects the approach above.]

Example based on a partial award for costs

William slipped in the lobby of his luxury hotel and sustained an injury. He wanted compensation from the hotel, but they wanted to fight him in court.

At the hearing, William received an award of \$100,000, plus \$20,000 for partial costs. The other side was also ordered to pay \$15,000 for disbursements that William owed to his lawyer.

William and his lawyer had agreed on a contingency fee of 25% of the combined award and costs. That meant she could receive \$30,000 + HST.

However, their contingency fee agreement said that if his case went to a hearing, his lawyer could opt to charge him the \$20,000 awarded for partial costs, plus an additional amount of up to 2/3 of the awarded costs (\$13,200) to help make up for all her work on the case.

The agreement said this additional amount must not exceed half of the contingency fee that would have otherwise applied. In this case, the additional amount would not be permitted to exceed 50% of \$30,000, or \$15,000.

The extra \$13,200 was under the \$15,000 limit. So the additional amount was allowed.

William's lawyer prepared a final account statement:

Award and partial costs (\$100,000 + \$20,000)	\$120,000
Less: Partial costs awarded	-20,000
Less: Additional fee at 2/3 of partial costs (66% of \$20,000)	-13,200
HST on total fees (\$20,000 + \$13,200 x 13%)	-4,316
Plus: Disbursements paid by the other side (including HST)	15,000
Less: Disbursements owing to William's lawyer	-15,000
William will receive:	\$ 82,484

Your Agreement Summary

[Firm Name, Address, Telephone Number, Email, Fax]

Client: *[Insert names of all clients covered by the agreement.]*

<p>Client a party under disability – Court to approve agreement</p>	<p><i>[Select if client is a party under disability as defined in the Rules of Civil Procedure, represented by a litigation guardian. Delete this row if N/A.]</i></p> <p>A judge must approve this agreement. We are required to ensure that this approval happens either before the agreement is finalized or as part of the court’s approval of a settlement agreement or a consent judgment.</p>
<p>Legal services covered</p>	<p>You retain us on a contingency fee basis to <i>[Briefly describe the nature of the matter and the scope of the retainer.]</i></p> <p>You retain us to represent you: <i>[Select each bullet point that applies. Erase what does not apply:]</i></p> <ul style="list-style-type: none"> • through to settlement • through to the end of your hearing • through an appeal if you lose your case and decide to appeal. <p>You have the right to make all critical decisions about how your case is conducted.</p>
<p>Related legal issues not covered</p>	<p><i>[List excluded services in bullet points, if applicable. Delete this row if N/A.]</i></p>
<p>Disbursements</p>	<p>We may have to pay for items and services from third parties, including taxes. These payments are considered disbursements because we paid for them on your behalf (for example, court filing fees and fees for expert witnesses).</p> <p>Internal firm costs are not generally chargeable as disbursements. For example, disbursements do not include the cost of other lawyers, paralegals, law clerks and administrative assistants, or any overtime.</p> <p>However, expenses approved by a court or tribunal or authorized by a regulation known as “Tariff A” are also considered disbursements, even if they are internal firm costs (Tariff A is part of the Rules of Civil Procedure).</p>

	<p><i>[Select what applies and delete all others:]</i></p> <p>You pay for disbursements, whether you win or lose, at the end of the case.</p> <p>You pay directly for disbursements as they are incurred.</p> <p>We will bill you for disbursements over the course of your case.</p> <p>You will only have to pay for disbursements if you win your case or receive a settlement.</p>
Contingency fee	<p><i>[Insert a short summary of the fee, including the percentage and any other special conditions.]</i></p>
If interim costs are awarded	<p><i>[Select if client receives some of the interim costs:]</i></p> <p>If we settle or win your case, we will reduce our fees in the final account statement by the amount we have already received.</p> <p>If we do not settle or win your case, or the award or settlement is very low, the amount received in interim costs may turn out to be more than we are entitled to. We will pay the extra money to you.</p> <p><i>[Select if the firm keeps the interim costs if case lost or award is low:]</i></p> <p>If we settle or win your case, we will reduce our fees in the final account statement by the amount we have already received.</p> <p>If we do not settle or win your case, or the award or settlement is very low, we will keep the interim costs to cover some of the fees for our work on your case.</p> <p><i>[Select if firm is paying for disbursements up front:]</i></p> <p>If money is awarded for disbursements, we will use it to pay for disbursed expenses incurred in your case.</p> <p><i>[Select if client is paying for disbursements up front:]</i></p> <p>If money is awarded for disbursements, we will give this money to you to reimburse you for some of the disbursements you have paid.</p>
Your right to a review of the final account	<p>If you feel that the final account statement is unreasonable, contact the Superior Court to ask for a review. You should do this within 30 days of receiving the final account statement.</p>