

Retainer Agreement Family Law

This document is a supplement to practicePRO's *managing the finances of your practice* booklet. It reviews the steps you can take to better manage the finances of your practice, and is available at www.practicepro.ca/financesbooklet

This document should be adapted to suit your practice and the matter it is being used for. See Note below.

Dear [client name]:

Re: [description of matter]

Part 1: Our Services

Legal Services Covered by This Agreement

You have asked me to provide legal service to you with respect to [description]. I agree to provide these services once I have received a signed and dated copy of this contract. I will then be your lawyer throughout the whole legal process, including trial, if necessary.

The legal services which may be required, if you instruct me to proceed, are as follows: [amend as necessary]

1. Attempting to negotiate a settlement;
2. Commencing proceedings for a division of family assets, maintenance and custody;
3. Defending proceedings for a division of family assets, maintenance and custody;
4. Applications to court for restraining orders, interim maintenance, interim custody, and possession of property;
5. Obtaining financial disclosure from your spouse;
6. Preparing for, attending and conducting examinations for discovery;
7. Preparing a separation agreement;
8. Preparing for and attending trial;

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9. Obtaining a divorce;
10. Obtaining judgment, settling the order and enforcing the order granted by the court.

[All of the above may not be required.]

I will keep you informed about matters that arise and discuss with you any significant decisions you must make. I will give you my best legal advice, but you will make the final decisions. Significant decisions may require your written consent.

Time

It can take a number of years for family law matters to be settled by either trial or agreement. Factors which determine the time required include: your spouse's frankness and cooperation in disclosing information and producing documents, the need for evaluations of property, businesses and pensions, the need for interim applications to court, the number of documents involved, the degree of hostility between you and your spouse, the wait for an available court date (and the possibility that the court may be overbooked and your case postponed to a later date), and the availability of your spouse's lawyer. I may have little or no ability to assist you with an early resolution of your legal matters, depending on the cause of the delay.

I will keep you fully informed of all events as they develop in your case, but there may be periods of unavoidable delay. I will do what I can to minimize this problem.

Your Role as Client

You understand the importance of giving me all the facts and of being totally honest with me. I can only do my best job if I have your trust and am fully informed.

In particular, I ask you to give me all information you have, or have access to, which could help me in working on your case. In that regard, I enclose two copies of the financial statement form and ask you to complete as much of it as you can and return a copy to me.

I will also need copies of your three most recent income tax returns, copies of three recent pay slips (or Employment Insurance benefit statements) and your most recent Property Assessment Notice, if any real estate is owned in whole or in part by either you or your spouse.

If your or your spouse's property or financial circumstances change, please inform me immediately.

If your marital difficulties include problems of harassment or abuse by your spouse, please keep a daily written record of such problems and provide me with a copy monthly.

Legal Services Not Covered by this Contract

If your case goes to trial and either you or your spouse is unhappy with the court's decision, you or your spouse could appeal the decision of the court to get a higher court to change that decision. I will tell you what I think the likely outcome of an appeal would be. But this contract does not cover the work that would be involved in such an appeal. If you wanted me to be your lawyer on the appeal, I would ask you to sign another contract to cover those new legal services and fees.

I have not agreed to give you legal advice or perform legal services for you relating to any other matter.

[OR, optional statement if other legal work was discussed] In particular, although you told me **[describe the cause of action, for example, "you were let go from your work"]**, you have not asked me to take any legal action regarding this.

Part 2: Fees, Expenses and Billing Arrangements

Our Fees

Generally, my fees will be based on an hourly rate and will depend on the actual time spent. I will be the main lawyer responsible for your case, but from time to time other people in my office may do some of the work. Some work may need to be done by a more senior lawyer, and other work can be done equally well by a more junior lawyer.

There are also many services, such as gathering information and preparing routine documents, that my paralegal assistant is well qualified to perform and at a lower cost. The paralegal works under the supervision of a lawyer, but may not give legal advice. My paralegal is **[name]**.

Billable legal services include preparation of and responding to correspondence, all telephone calls and office attendances, examinations for discovery, negotiations, preparation of documents and preparation for trial.

My firm's hourly rates are:

My rate	[\$amount] per hour
[senior lawyer's] rate	[\$amount] per hour
[junior lawyer's] rate	[\$amount] per hour
[paralegal's] rate	[\$amount] per hour

In the event that your case proceeds to trial, my services will be charged at **[\$amount]** per day, exclusive of trial preparation. If your case requires a junior lawyer to accompany me to Court, that lawyer's services will be charged at **[\$amount]** per day.

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If my firm's fees increase, which they may, I will give you at least three months notice of such change.

Fees to Reflect the Value of our Services

Although the fees billed to you by my firm will generally be based on the actual time spent, the total fees charged may reflect the value of our services to you. For example, if I obtain an exceptionally good result for you, our total fees may be higher than a simple calculation of the total hours spent. When determining what the value of our services is, I will consider whether: I obtained an exceptionally good result for you; I had to put aside work on other files because yours was urgent; I had to spend time outside normal business hours; or your case was extremely complex.

Legal Expenses (also called disbursements)

In addition to my fees, you agree to pay all expenses, even if I cannot settle all your family law issues or we lose at trial.

Minor Expenses

I will charge you for the minor ongoing expenses (also called disbursements) that I have to pay. Some of these expenses are long distance telephone calls, photocopying costs, costs to deliver documents to court or to your spouse's lawyer, faxes, court filing fees, and necessary land, company registry or other searches.

This letter authorizes me to pay all necessary minor expenses as required from time to time from your retainer (see below for further information on retainers).

Major Expenses

I may have to hire other people, such as court reporters, expert witnesses, accountants, and property appraisers to help with your case. If I need to hire these people, I will first discuss the matter with you. It will be your responsibility to pay for their services, either directly or as part of the retainer you will provide to me from time to time.

Costs

If we successfully settle your claim or win at trial, we will seek a sum of money called costs from your spouse. These costs, if we get them, will be applied to reduce any fees still owed to us by you, or will be sent to you if you have fully paid our accounts.

If we are not successful in settlement or at trial, your spouse may seek costs against you. You are responsible for paying the costs ordered to your spouse.

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GST

In addition to our legal fees and expenses, you also agree to pay any Goods and Services Tax (GST) that we must charge you.

Billing Arrangements

Retainer

[Option 1] Before I start work on your file, you agree to pay me a deposit of \$[amount], called a retainer. I will keep this retainer in my general trust account (where I keep my clients' money) for your benefit until I send you my first bill. At that time, I will transfer money from your retainer to help pay that bill. When the retainer has been used up, I may ask you to pay me another retainer. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any GST and any unpaid expenses.

[Option 2] I understand that you are not in a position to pay me an initial retainer at this time or pay your account from time to time, but rather you must wait until you have obtained a property settlement or judgment. However, I will be sending you an account for fees and expenses as if you were able to pay and will be charging you interest as set out below.

I will require a retainer from you in the amount of \$[amount] to cover the GST that will be charged for each of your accounts and must be remitted by us to the government. When this retainer has been used up, I may ask you to pay me another retainer. If your financial situation changes and you become able to pay your accounts as they become due, please do so immediately. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any GST, and any unpaid expenses.

When you obtain an interest in property, I will ask you to provide security for our accounts by granting this firm a mortgage. You will be asked to seek the advice of another lawyer before executing the mortgage.

[Option 3] I understand that you are not in a position to pay your anticipated accounts as they are rendered, but you will pay me an initial retainer of \$[amount] and 12 postdated cheques in the amount of \$[amount]. I will be rendering to you periodic billings and will be charging you interest as is described below on any outstanding amounts. If your financial situation changes and you become able to pay my accounts in full as they become due, you will do so immediately. All funds received will be applied firstly to pay GST and then to pay your account. At the end of your case, I will refund any money left over in your retainer, after deducting any unpaid or final bills, any GST and any unpaid expenses.

Periodic Billings

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I will bill you from time to time for my services and minor expenses as work is done. My bills will detail the work done and the expenses I have had to pay.

I will usually ask you to pay major expenses (for example, to hire expert witnesses) in advance or I will have the bill sent directly to you to pay.

Please pay my bills within 30 days. If you are unable to pay my bills on time and have not already made prior arrangements with me, please discuss this with me immediately.

Interest

I will charge you interest of [**one**] percent per month ([**12**]%) per year) on the balance of any bills that remain unpaid for more than 30 days. I will tell you in advance if I change the interest rate.

Deduction from Settlement or Judgment

You agree that any money from a settlement or judgment, including costs, will be paid directly to me in trust. I will then deduct any unpaid or final bills, any GST and any unpaid expenses, and give you the balance.

Part 3: Dealing With Each Other

Telephone Calls

I will try to return your telephone calls or respond to your letters as quickly as possible, but I will not always be able to do so on the same day that you have left a message. I am primarily a courtroom lawyer and am often in court. When representing a client in court, I devote my time during that period to that client and have only a limited ability to return other clients' calls or answer their letters. When it is your turn to go to trial, if that happens, I will be devoting my time to you and your case.

I remind you that I will bill you for all telephone calls and meetings, including any time I may need to prepare for such conversations and document them afterwards. In order to receive the most value for the services you pay for, I will try to be as efficient as possible. In turn I hope you will limit our conversations in time and subject matter to those topics necessary to resolve your family problems.

If you have any questions or need to provide me with additional information, I suggest that you write to me or, if I am not available, please speak to my paralegal, [**name**], who may be able to assist you or can pass on a detailed message to me.

Ending the Relationship

By You

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You are free to end my services before your case is completed by writing me a letter or note. If you do, you agree to pay my fees and expenses up to the date of ending those services. I will also ask you to sign a court form which tells the court I no longer act for you.

By Me

I am free to withdraw my services at any time if I have good reason. For example, I would withdraw my services if a client:

- misrepresented facts or failed to disclose important facts;
- did not cooperate with me in any reasonable request;
- ask me to do something unethical or illegal;
- did not pay my bills on time without making other arrangements for payment.

Again, you would have to pay my fees and expenses up to the time I stopped acting for you.

I would also have to withdraw my services if I learned of a conflict of interest that would make it unethical for me to continue to act for you. A conflict of interest occurs when what is best for one of the clients of my firm somehow is not best for or hurts another of our clients. If I have to withdraw my services for you because of a conflict of interest, you will only have to pay my fees and expenses up to the time I stopped acting for you.

Confidentiality

As your lawyer, I have to share relevant information about your case with your spouse's lawyer and the court. But unless I need to share this information as part of my work, all information you give me will be kept confidential between us.

No Guarantee of Success

I will try my best in acting for you and give you my best legal advice. However, you understand that I cannot guarantee the successful outcome of your family problems. Remember that these issues may involve risks and uncertainties in the law, the facts, and the evidence.

Part 4: Review of this Contract

For 90 days after signing this contract or after our relationship has ended, you have the right to ask the court to review this contract to see if it is unfair or unreasonable. You have this right even if you have paid my legal fees or expenses.

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I also invite you to ask another lawyer to review this contract, if you wish, to make sure it is fair and reasonable.

Part 5: Signing this Contract

This contract contains the whole agreement between us about our relationship with each other and my legal fees and expenses. It will not be changed unless you and I both agree and sign any changes. It will legally bind anyone, such as heirs or legal representatives, who replaces either you or me, but it does not legally bind other lawyers who might later act for you if you decide to end our relationship.

If you are satisfied with this contract, please sign and date both copies and return one of them to me. Keep one for your records. If there is anything you do not agree with, or if there is anything you would like to discuss before signing, please call or write me.

Lawyer's signature

Date

I have read this contract carefully and I agree with it.

Client's signature

Date

NOTE: Model retainers are provided by LAWPRO for your consideration and use when you draft your own documents. They are NOT meant to be used "as is". Their suitability will depend upon a number of factors, such as the current state of the law and practice in each area of law, your writing style, your needs, and the needs and preferences of your clients. These documents may need to be modified to correspond to current law and practice.

Retainer letters or agreements should include reference to the following:

- identity of the lawyer and the client;
- scope of service (is your work to be limited in any way?);
- obligations of client;
- delegation of work;
- expected chronology;
- fee arrangement;
- billing format;
- rate changes;

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- withdrawal or termination of services; and
- conflicts of interest.

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