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**Sample Client Memorandum: Billing Policy**

[**NOTE**: This Sample Billing Policy should not be used for contingency fee matters and does not address referral fees. Please review the Law Society’s [Referral Fees](https://lso.ca/lawyers/practice-supports-and-resources/topics/managing-money/fees-and-disbursements/referral-fees) and [Contingency Fees](https://lso.ca/getdoc/e6b83846-07d7-43f4-9865-da7e7a2755ac/contingency-fees#:~:text=Contingency%20Fee-,A%20contingency%20fee%20is%20a%20fee%20that%20is%20contingent%2C%20in,services%20are%20to%20be%20provided.) resources for additional information on the requirements for such arrangements].

To: [Client name]

File Name: [file name]

File Number: [file number]

Description of the Matter: [summary of retainer purpose/objectives]

Date: [date of memo]

## **FEES**

### **Basis for calculating our legal fees**

Our fees are based on the following elements:

1. the time spent on your behalf and the service which is performed
2. our experience and abilities and whether special skills or service are required in your matter
3. the complexities of the matter and your potential monetary exposure
4. the degree and type of resistance encountered
5. the extent to which any work needs to be performed on an emergency basis
6. special circumstances, such as the loss of other retainers, postponement of payment, or uncertainty of reward (if applicable), and
7. the results accomplished

None of these elements is capable of a precise arithmetic assessment and no such assessment is attempted, except in a general way, with respect to the time spent. A standard hourly rate, as set out below, is applied to convert the time into a monetary figure. Amounts that exceed or are less than the number of hours multiplied by the standard rates is the result of the weighing of the other elements mentioned.

As your matter progresses, we will confirm with you any revisions to our fees, especially if something unusual or unforeseen occurs that affects the fees payable.

[**Joint Clients Only**] If you are being jointly represented by our firm, all fees and disbursements will be divided equally between all the clients, unless each client and the firm consent in writing to a different arrangement. The agreed upon division of our fees will be outlined in the statement of account which will be provided to each client individually.

### **Our hourly rates**

Standard hourly rates are charged for the work performed by the [lawyers/paralegals], law clerks, or articling, summer, or paralegal students who will be assisting with the matter, and for the time spent on your matter. Records are kept (in our time-keeping system) by the firm to the nearest one tenth of an hour for all activity on your matter, including meetings, telephone calls, voicemail, e-mail, preparing correspondence and memoranda, drafting documents, research and travel time. Each hour billed is based on actual work completed for your particular matter.

Our absence from the office on your behalf is charged at the usual hourly rate. Travel time includes attending at court, settlement conferences, meetings, or consultations on your behalf. We will minimize travel expenses and courthouse time, if any, wherever we are able. Charges for travel time are in addition to the legal services/legal representation fee.

### These are our present hourly rates:

[Lawyer/Paralegal] #1 $                per hour

[Lawyer/Paralegal] #2 $                per hour

[Law Clerk/Articling, Summer or Paralegal Student] $ \_\_\_\_\_ per hour

Where the [lawyers/paralegals] consult with one another on your file, you are billed for the time of the [lawyers/paralegals] involved. Consultation between [lawyers/paralegals] takes place to decide work assignments on larger matters, to delegate tasks, to determine strategy and to consult on legal issues.

### **Court, tribunal appearance charged as legal representation fees**

If there is a court case in your file, services performed in court and settlement conferences are charged on the basis of legal representation fees, calculated by the day rather than by the hour. This method attempts to account, in part, for our unavailability to other clients during these periods, and for the need to set aside fixed periods of time for a court appearance. Where the attendance is for part of a day only, the fee is apportioned accordingly.

### These are our present legal representation fees:

[Lawyer/Paralegal] #1 $                 day

                                    $               half day

[Lawyer/Paralegal] #2 $                  day

                                    $                  half day

### **Consultations charged at flat rates**

If your appointment is for a consultation only, in order for you to receive advice on a limited number of issues, or, for example, for a second opinion, you will be billed a flat rate consultation fee payable on the conclusion of the consultation.

These rates are reduced rates and apply only if the fee is paid at the time of the consultation. The rates are calculated on the basis of the average amount of time spent by the [lawyers/paralegals] on consultations in the most recent year.

The consultation rates do not apply if you retain the firm to perform work on your behalf, nor do they apply if you return for a second meeting. In that case, you will be billed at our usual hourly rates.

### These are our usual consultation rates:

[Lawyer/Paralegal] #1 $                  per hour

[Lawyer/Paralegal] #2 $                  per hour

### **Annual increase in fees**

We have sometimes increased our hourly rates and our legal representation fees, to meet rising costs and to reflect our increased expertise. This retainer is subject to our right to make similar adjustments if circumstances should change again. Unless you are advised otherwise, our fees will be increased annually by no more than                  %.

## **EXPERTS**

In some instances, it may be necessary for us to consult outside experts to assist in your matter. If experts are required, we generally have our clients deal directly with the expert and make payment arrangements with the expert personally.

This direct contact also has the benefit of avoiding duplication and reducing cost.

## **DISBURSEMENTS**

### **Charges for our out of pocket expenses**

Disbursements are out-of-pocket expenses and are as follows:

* couriers, printing, photocopying, or scanning of paper documents at $                  per page
* long distance telephone calls
* postage
* court filing fees or other administrative filing fees required in your matter
* parking
* transcripts of examinations
* fees for accountants and other outside experts or reports, if incurred

Attached is a copy of the fee schedule charged by the [name of court or tribunal], for the issuing and filing of documents in that [court or tribunal]. These items are shown separately on our accounts, and are charged to you at cost, in addition to the fee.

## **RETAINER**

### **We require money retainers to begin and continue to serve you**

The retainer is an amount paid to our firm in trust, for deposit to your credit, on the understanding that it will be used to satisfy our accounts for legal services and disbursements at the time accounts are delivered. The retainer is a source of payment for your accounts. You are expected to provide and replenish the retainer when requested, as it is spent, so that we continue to have enough money in trust to cover legal services completed and necessary next steps. Until you provide us with a retainer, or replenish it when it is exhausted, we will not work on your file.

The retainer is not a flat fee or an estimate of the cost of your work. You are responsible for the fees and disbursements not covered by the initial or replenished retainer. Of course, any unused portion of the retainer will be refunded to you at the end of our work for you.

The amount of the retainer should not be taken as an estimate of the cost of the completion of the work in your particular matter. At this point, before the issues are clarified, and before we know the degree of resistance, we cannot predict the amount of work to be done, nor the time needed to complete it.

If we are to start negotiations on your behalf, our usual retainer is $                       .

If we are to begin litigation on your behalf, our usual retainer is $                     to $                    , depending on the urgency of the situation and the complexity of the matter. If your matter is already in litigation, our retainer may be more, particularly if there is much to be done or the matter is urgent.

## **COST OF LEGAL SERVICES**

### **Estimating the cost of legal services**

Clients usually want to know “what will this all cost?” That's a reasonable question. But it is not always possible to accurately estimate costs in advance. Many important factors which influence the cost are unknown to us, and even outside our control, including

* the reaction and tactics of the other side
* how many different issues there will be in your matter
* how much time it will take to resolve all the issues
* how complicated the matter is
* new issues which may come up, and
* whether we can settle this matter without going to the court or tribunal.

In some cases, the legal issues change during the time we work for you. New issues may arise, and existing issues may become more complex. We see it as our job to close your file as quickly and economically as possible, consistent with protecting your interests.

Despite these difficulties at predicting the amount of legal fees your matter may involve, we will attempt to give an estimate of the cost of legal services based on certain assumptions. **You will be receiving a personalized estimate under a separate covering letter.**However, understand that when the assumptions change, when new developments arise, the cost estimate may no longer be valid. We will remind you of this from time to time and correct our estimates as the matter unfolds.

## **ACCOUNTS**

### **You will be billed on the \_\_\_\_\_\_\_\_ day of each month**

We prepare interim accounts on a regular basis, usually on the                      day of the month, for fees and disbursements. If your matter is very active, particularly if we are in court for you, you may get accounts from us on a more frequent basis.

This is, in part, an effort to ensure that you have a good understanding of what the matter is costing you at all times. For most people, the cost of the matter will be an influencing factor in decision-making about the next step to take, and the kind of response to make to the other side; in our experience, it should be. The amount of fees on the interim accounts is usually based on time spent, but where appropriate, could include an additional charge based on the other elements referred to above.

### **Accounts sent by e-mail**

We send accounts by e-mail, if that is possible**. If we cannot send your accounts to you this way, please let us know.**

### **Payment methods**

We accept payment of fees and disbursements by [cash], [debit or credit card], [or via electronic payment (e-transfer)], and you may consider that as an alternative in settling your outstanding accounts with us, or in providing or replenishing the retainer.

If third parties (such as family or friends) are financing your legal fees and disbursements, we ask that they provide the payment to you and that you replenish your retainer or pay an outstanding account.

**If a third-party will be making payment to us on your behalf, please let us know in advance so that we can make the necessary arrangements and clarify our relationship with them. Please note that we do not accept unexpected payments made by third parties.**

## **INTEREST [FOR LAWYERS’ ACCOUNTS ONLY]**

The accounts are due to be paid when they are sent. If the account is not paid within one month after it has been sent, interest will be charged on the outstanding balance at the rate permitted in the *Solicitors Act*  or as otherwise permitted by law and shown on the account, from the date of the account until the date of payment.

## **COSTS FOR DUPLICATING MATERIAL ALREADY PROVIDED**

We will keep you informed of all developments in your matter. We will forward to you electronic or paper copies of all relevant correspondence, pleadings, other court or tribunal documents, and reports. It is important to keep this material and it is to your advantage to maintain it in an organized format. We suggest you keep the correspondence in one file, the pleadings and other court documents in another file, and all of the documents in chronological order.

If you require additional paper or electronic copies of correspondence or pleadings, we can make them available to you at our usual rates for printing, photocopying, or scanning.

## **DIVISION OF FEES**

In some cases, we may share or divide our fees with other lawyers or paralegals outside our firm who provide additional legal services on your file (this is called “fee splitting”). Fees will be split proportionate to the work done and the responsibilities assumed by each lawyer or paralegal. If this is necessary, we will inform you of the particulars and obtain your informed consent before proceeding.

## **ENDING OUR WORK FOR YOU**

### **You can terminate our services at any time**

At any time, you may terminate our services by giving us written notice and paying any outstanding legal fees and disbursements. If the firm is shown on court or tribunal documents as your legal representative, then court or tribunal records must be formally changed, in writing. Usually we can file a document that you sign, telling the court or tribunal and the other side that we are no longer representing you.

### **We can terminate our services in certain circumstances**

Subject to our obligation to ensure proper standards of professional conduct, we can also end the [lawyer-client/paralegal-client] relationship. If this should happen, we will do so in writing and we will assist in the transfer of your file, if appropriate.

You should be aware of some of the circumstances that may permit us to end the retainer:

1. we cannot get instructions from you
2. you lose confidence in our ability or advice
3. a conflict of interest arises
4. we cannot accept your instructions for ethical reasons
5. you mislead us in a material matter, or you lie to us
6. after reasonable notice, you fail to provide or replenish the money retainer or provide funds for legal fees or disbursements

If it is necessary for us to take legal steps either to end our representation of you or to collect our accounts, you will be charged for the time involved.

**If you have concerns about our billing policy, please advise us now so that there are no future misunderstandings.**