



The Law Society of  
Upper Canada | Barreau  
du Haut-Canada

## MEMORANDUM

**To:** All Benchers

**From:** Jim Varro, Policy Advisor, Policy Secretariat, Policy and Legal Affairs

**Date:** December 6, 2002

**Re:** *Justice Statute Law Amendment Act, 2002 - Amendments to the Solicitors Act to Permit Contingency Fee Arrangements*

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### Introduction

Bill 213, the *Justice Statute Law Amendment Act, 2002*, deals with three unrelated matters, by enacting three schedules:

- a. Schedule A: Contingency Fee Agreements (amendments to the *Solicitors' Act*);
- b. Schedule B: a new *Limitations Act* and
- c. Schedule C: amendments to the *Public Accountancy Act*.

All of the Schedules come into force on proclamation, and Section 2 of the Bill provides that the Schedules may be proclaimed on different dates.

### Contingency Fee Agreements

The Bill amends the *Solicitors Act* to regulate lawyers' use of contingency fees. The Bill, relevant pages of which are attached, includes the following provisions:

1. The court cannot reduce an award of costs to a client only because the lawyer and client have agreed to the lawyer's compensation through a contingency fee agreement. (s. 20.1(1))
2. A client may recover the full amount of an award of costs, even if it exceeds the amount payable under a contingency fee agreement, if the award is to be used to pay the client's lawyer. (s. 20.1(2))
3. If the client recovers the full amount of an award of costs as described above, the client is only required to pay to the lawyer the costs and not the amount under the contingency fee agreement, unless the court has approved a contingency fee agreement that provides for payment of both the amount under the agreement and costs awarded under s. 28.1(8). (s. 20.1(3))
4. Contingency fee agreements cannot include, in addition to the fee payable under the agreement, an award of costs or costs obtained as part of a settlement, unless the court, on the joint application of the lawyer and client, approves the payment of costs to the lawyer because of exceptional circumstances. (s. 28.1(8))
5. The amount of a contingency fee can be no more than a maximum percentage of the award or recovery as prescribed by regulation, if a maximum percentage is prescribed. (s. 28.1(5)).
6. The lawyer and client may jointly apply to the court for approval of a fee that is higher than the maximum percentage. (s. 28.1(6))
7. In circumstances other than those described in paragraphs 4 and 6 above, the client may apply for assessment of the lawyer's bill within 30 days of its delivery or one year after its payment. In circumstances to which paragraphs 4 and 6 above apply, the client or lawyer may apply for assessment within the time prescribed by regulation.

8. Contingency fees are prohibited in criminal, quasi-criminal and family matters.(s. 28.1(3))
  
9. The Lieutenant Governor in Council may make regulations covering
  - a. the maximum percentage of the amount or of the value of the property recovered that may be a contingency fee
  - b. the maximum amount of remuneration that may be paid to a solicitor pursuant to a contingency fee agreement
  - c. treatment of costs awarded or obtained where there is a contingency fee agreement
  - d. prescribing standards and requirements for contingency fee agreements, including the form of the agreements and terms that must be included in contingency fee agreements and prohibiting terms from being included in contingency fee agreements
  - e. duties on solicitors who enter into contingency fee agreements
  - f. the time in which a solicitor or client may apply for an assessment
  - g. exempting persons, actions or proceedings or classes of persons, actions or proceedings from this section, a regulation made under this section or any provision in a regulation. (s. 28.1(12))