



Advertising & Fee Arrangements Issues Working Group

Call for Comment: Contingency Fee Arrangements

The Law Society's Advertising and Fee Arrangements Issues Working Group would like to hear from lawyers, paralegals and the public about potential changes to the regulation of contingency fee arrangements.

The Working Group recognizes the important role contingency fees play in providing access to justice.

However, it has received a great deal of information about contingency fee arrangements that has led it to conclude that changes to the regulation of contingency fee arrangements are necessary in order to protect consumers.

The Working Group is concerned that there appears to be widespread noncompliance with the current regulatory requirements governing Ontario's contingency fee regime. It is also concerned that when the current regulatory requirements are followed they can be confusing and at times cause unnecessary conflicts of interests to arise between a lawyer or paralegal and his or her client. As a result of the significant issues the Working Group has observed in the current operations of Ontario's contingency fee regime, it is considering changes to ensure that contingency fees can continue to provide access to justice in a manner that protects consumers.

Proposed client protection measures

The Working Group is considering the following measures to improve the protection of the public in contingency fee matters:

Mandatory standard form contingency fee agreement

A mandatory standard form contingency fee agreement could facilitate client understanding of contingency fee agreements ("CFAs") and facilitate comparison of the cost of legal services being offered. A standard agreement would also highlight key consumer rights and responsibilities and ensure that all client retainer agreements meet the requirements of the *Solicitors Act* and its regulations.

Reforms to the *Solicitors Act*

The Working Group is considering requesting that amendments be made to the *Solicitors Act* to require that contingency fees be calculated as a percentage of the all-inclusive settlement amount or all-inclusive amount awarded at trial, less disbursements.

This method simplifies the calculation of fees and aligns the interests of clients and licensees. It would replace the current provision that the fee is based on a percentage of the total settlement amount less recovery on account of disbursements and legal costs, which is difficult to calculate in practice and which creates inherent conflicts between the licensee's interest and the client's interest.

Safeguards to ensure fees are clear, fair and reasonable

The Working Group is considering a range of approaches, including:

- A limit on fees by a percentage cap or other means; either a fixed or sliding scale;
- Requiring independent legal advice be provided to a client in certain situations before the fee is paid; and
- Introducing new client reporting requirements to ensure that fees are fair and reasonable. These include requiring licensees to:
 - Explain in the client reporting letter the basis for the fee by reference to the agreed percentage under the CFA, and by reference to the factors used to generally consider the reasonableness of a fee;
 - Record the professional and paraprofessional time spent on CFA matters;
 - Report the amount and value of time spent on the matter in the final account to the client; and
 - Advise the client in the final account of the client's right to apply to have legal fees assessed.

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, please see its most recent [report to Convocation](#).

Find the report, more information about the Working Group and its other work to date at www.lsuc.on.ca/advertising-fee-arrangements.

Comments may be submitted online by September 29, 2017.

Submissions will be provided to the Working Group, the Law Society's Professional Regulation Committee and Convocation, and may be reproduced, and/or made publicly available by the Law Society with attribution.

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