

"CONTINGENCY FEE RETAINER AGREEMENT"

This contingency fee retainer agreement is

B E T W E E N :
Bogoroch & Associates
Sun Life Centre
150 King Street West, Suite 1707
P.O. Box 56
Toronto, Ontario
M5H 1J9

Tel: 416-599-1700
Fax: 416-599-1800
Toll Free: 1-866-599-1700

(Hereinafter called the "Solicitors")

and

Tel:

(Hereinafter called the "Client")

1. What we are retained to do:

Bogoroch & Associates are being retained by the client to provide the following services, namely, to represent the client in respect to injuries, losses and damages resulting from a medical malpractice which occurred _____.

Initials

In representing the client's interest in respect to the above-noted matter, Bogoroch & Associates will be incurring a significant amount of time and out-of-pocket expenses for and on the client's behalf. In retaining the services of Bogoroch & Associates, the client has the option of retaining the solicitors other than by way of a contingency fee agreement, including retaining the solicitors by way of an hourly rate retainer. An hourly rate retainer is a retainer whereby the solicitors charge the client for each hour or a portion thereof that they work on the client's file at a specified hourly rate. Hourly rates may vary among solicitors and the client can speak with other solicitors to compare rates. Notwithstanding that the client has been advised of the hourly rates of Bogoroch & Associates and that hourly rates may vary among solicitors and notwithstanding that the client can speak with other solicitors to compare rates, the client has chosen to retain Bogoroch & Associates by way of a contingency fee agreement. The client acknowledges and understands that all usual protections and controls on retainers between a solicitor and client, as defined by the Law Society of Upper Canada and the Common Law, apply to this contingency fee agreement.

2. The Amount of the Contingency Fee:

The contingency fee paid by the client to Bogoroch & Associates is equal to 30% of all amounts recovered on behalf of the client for injuries, damages, and losses, excluding disbursements (out-of-pocket expenses), excluding partial indemnity costs, regardless of the source of the said recovery whether by way of settlement of the client's claim or by way of judgment following a trial.

Initials

For example:

To help you understand how our percentage will be determined, we offer the following sample calculation. This sample calculation does not apply to your case; it is for illustration purposes only.

Suppose that before trial, your case is settled for the following amounts (paid as lump sums):

Damages plus interest:	\$100,000
Costs (from the Defendant), including HST:	\$ 10,000
Disbursements (reimbursed by the Defendant):	<u>\$ 10,000</u>
Total:	\$120,000

In this example, our fee would be 30% of the total damages and interest awarded to our client (excluding costs). The invoice delivered to our client would consist of the following:

Fee of 30% x \$100,000:	\$ 30,000
HST on our fee:	\$ 3,900
Disbursements (reimbursed by defendants):	\$ 10,000
Client Disbursements (faxes, photocopies, Long distance telephone, courier, etc.)	(included in our <u>percentage fee</u>)
Sub-total:	\$ 43,900

Your recovery will then be \$76,100 (\$66,100 for claim plus \$10,000 costs payable by the other side).

Initials

It is agreed that Bogoroch & Associates shall not recover more in fees than the client, recovers as damages or receives by way of settlement.

As client, you are responsible for the repayment to Bogoroch & Associates of all disbursements (out-of-pocket expenses) including H.S.T. that Bogoroch & Associates have paid on your behalf. Such disbursements (out-of-pocket expenses) are likely to include but are not limited to, photocopying charges, faxes, postage, courier charges, long distance telephone calls, mileage, experts' reports, court filing fees, computer assisted legal research, as well as other miscellaneous out-of-pocket expenses. The client acknowledges that Bogoroch & Associates are entitled to be reimbursed for any of these disbursements that they have expended on your behalf subject to section 47 of the *Legal Aid Services Act*, 1998 and such entitlement is a first charge on any funds received as a result of a judgment or settlement of the within matter.

So long as we act for the client and the retainer is not terminated, Bogoroch & Associates will absorb the following client disbursements in our fee. These disbursements include courier, taxi, photocopies, postage, long distance telephone calls, etc.

3. The Partial Indemnity Costs Paid by the Other Side:

In addition to being awarded money in compensation for the injuries, losses and damages that you have sustained inclusive of interest, either by way of settlement

Initials

or if settlement cannot be obtained, by way of a judgment following a trial, the other party may also be required to pay an amount of money towards your legal costs and disbursements. Unless otherwise ordered by a judge, you are entitled to receive any costs contribution or award, on a partial indemnity scale or substantial indemnity scale. By executing the within contingency fee agreement, you agree and direct that all funds claimed by Bogoroch & Associates for legal fees,, costs, taxes and disbursements shall be paid to Bogoroch & Associates in trust from any judgment or settlement money.

The amount of the contingency fee payable herein to Bogoroch & Associates shall exclude any amount awarded or agreed to that is separately specified as being in respect of costs and disbursements.

4. Your Rights to have the Court Assess this Fee:

You as client have the right to ask the Superior Court of Justice to review and approve the bill submitted to you by Bogoroch & Associates if payment of their fees and disbursements is by way of this contingency agreement. Should you, wish to ask the Superior Court of Justice to review and approve the solicitor's bill, you, may apply to the Superior Court of Justice for an assessment of the solicitor's bill rendered in respect to this contingency fee agreement within six months after its delivery.

Initials

5. What Happens if you Terminate this Agreement:

At anytime during the course of the representation by Bogoroch & Associates, you, or Bogoroch & Associates may wish to terminate this contingency fee agreement and to enter into a new retainer agreement. Such termination by either Bogoroch & Associates or you, must be in writing. In the event that either Bogoroch & Associates or the client terminates this contingency fee agreement then, in that event, the terms of this contingency fee agreement no longer apply to the calculation of the fees to be charged by Bogoroch & Associates for the services that they have performed rather, Bogoroch & Associates will then charge you on an hourly rate for the work that they have done and will continue to do on your behalf based on the following hourly rates as at January 1, 2007:

- | | | | |
|----|---|----------------------------|---|
| 1. | Richard M. Bogoroch | called to Ontario Bar 1983 | \$750.00 per hour |
| 2. | Linda J. Wolanski | called to Ontario Bar 1985 | \$400.00 per hour |
| 3. | Heidi R. Brown | called to Ontario Bar 1993 | \$325.00 per hour |
| 4. | For lawyers with four to six years of experience | | \$250.00 - \$275.00 per hour depending on the year of call; |
| 5. | For lawyers with one to three years of experience | | \$200.00 - \$250.00 per hour |
| 6. | For all law clerks and/or paralegals | | \$125.00 - \$150.00 per hour |

Initials

These hourly rates would apply to all of the work performed on the file from the inception of the file to the completion of the file either by way of settlement or by way of a judgment after trial.

Should you, decide to no longer retain the services of Bogoroch & Associates while the matter is ongoing, then, in that event, the termination of the services of Bogoroch & Associates must be in writing and in that event, all disbursements (out-of-pocket expenses) paid by Bogoroch & Associates on your behalf are immediately payable and you will be billed by Bogoroch & Associates for all services performed up to and including the date of termination of the retainer in accordance with the hours or portions thereof performed by the various members of the firm of Bogoroch & Associates based on the hourly rates referred to above. Until such time as all bills, accounts, disbursements and expenses have been paid by you, Bogoroch & Associates retains a solicitor's lien on your file and will only release your file to a new solicitor upon satisfactory arrangements being made for protection of and payment of the accounts of Bogoroch & Associates from any settlement or judgment after trial.

6. What Happens if the Client is a Minor or Person Under Disability:

If you are a party under disability as that term is defined under the *Rules of Civil Procedure*, for the purposes of the *Rules of Civil Procedure*, you, the client, as represented by a litigation guardian, shall be entitled to have the contingency fee

Initials

agreement reviewed by a judge before the agreement is finalized or be reviewed as part of the motion or application for an approval of a settlement or a consent judgment under Rule 7.08 of the *Rules of Civil Procedure*. Further, the amount of the legal fees, costs, taxes and disbursements are subject to the approval of a judge when the judge reviews a settlement agreement or consent judgment under Rule 7.08 of the *Rules of Civil Procedure*. Any money payable to a person under disability under an order or settlement shall be paid into Court unless a judge orders otherwise under rule 7.09 of the *Rules of Civil Procedure*.

7. Motions:

During the course of the lawsuit, Motions in Court maybe brought on the client's behalf or defended on the client's behalf. In the event that the Court awards Bogoroch & Associates costs on the Motion, Bogoroch & Associates will be rendering an interim account and any account so rendered will be credited to the fee that will be charged to the client.

8. What Happens if there is no Recovery: You Don't Pay Anything to Bogoroch & Associates:

It is agreed that if no money is recovered by settlement or judgment, no fees shall be charged or billed to you. However, in the event that costs of the other parties are awarded against you, those costs are solely the responsibility of you, the client, and not the responsibility of Bogoroch & Associates. We will discuss with you at different times during the litigation, whether there is any chance of the case being lost and no recovery obtained.

Initials

9. Appeals:

You further acknowledge that costs for an appeal of any judgment or order, or services rendered for the collection on said judgment or order are separate and apart from the services performed under this contract and are not covered by this contract. In the event of an appeal or in the event that collection on a judgment is necessary, a new retainer agreement that is mutually agreed upon shall be entered into between you and Bogoroch & Associates.

In executing the within contingency fee retainer agreement, you, the client, acknowledge that you have had the opportunity to obtain and have been advised to obtain independent legal advice but notwithstanding such advice, you have chosen to execute the within document willingly and voluntarily without undue influence or coercion of any sort. You further confirm by executing the within contingency fee agreement that you understand all of the terms and conditions contained herein and have had an opportunity to review same before signing.

Dated at _____, Ontario this ____ day of _____, 2011.

Witness

Witness Name (Please Print)

Initials

Witness

Bogoroch & Associates
Per:

Witness Name (Please Print)

Initials