

# PANTALONE ■ FAMILY ■ LAW

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## **RETAINER AGREEMENT**

Legal fees are sums charged for a lawyer's services. Disbursements are the sums paid by a lawyer on your behalf for actual expenses, e.g., filing court documents, photocopies, facsimile, postage, couriers, etc.

In an uncontested divorce action, e.g., a divorce action where there are no issues in dispute between the spouses, it is possible to quote accurately the cost of legal fees and disbursements, since the length of time and the results can be predicted precisely.

Clients usually want to know "*what will this all cost?*" That's a reasonable question. But, it is not possible to accurately estimate costs in advance in family law cases. 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 case, how much time it will take to resolve all the issues, how complicated the case is, new issues which may come up, and whether we can settle this case without going to court. Unlike other areas of law, the legal issues in a family law case may change during the time we work for you (new issues may arise, and existing issues may become more complex). In fact, family law may be the only area of law where the legal issues in the case evolve during our representation of you, as the facts in the case keep changing. We see it as our job to close your file as quickly and economically as possible, consistent with protecting your interests.

If you have concerns about our inability to provide an estimate for you, please advise us now, so that there is no future confusion.

I will require a financial retainer from you prior to rendering services or incurring disbursements on your behalf. The amount of the retainer will be based on my estimate of the amount of time that will need to be spent on your matter immediately, e.g., whether the matter will be proceeding to or is currently before the court, and this retainer will be applied to services rendered and/or disbursements to be incurred. We will agree upon the amount of the retainer.

In addition to our legal fees and expenses, you also agree to pay any Harmonized Sales Tax (HST) that we must charge you.

It is increasingly necessary for us to consult outside experts to assist in the presentation and preparation of your case. The two most obvious examples of this are health care professionals (for example, a social worker, psychologist, or psychiatrist), or financial professionals (for example, an accountant, a business valuator, or an actuary for pension valuations).

Accountants are sometimes necessary to assist in obtaining and processing financial information necessary to prepare and present claims for support and for property. The introduction of the Child Support Guidelines in 1997 has resulted in an increase in our use of accountants to determine the payor's income (particularly for self-employed payors).

It is to be understood that we are permitted to obtain this assistance for you, at prevailing rates, at our discretion. Generally, 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.

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.

From time to time you will be sent interim accounts. Such interim accounts will reflect the value of legal services performed and disbursements incurred to date. I will require further retainers as your matter proceeds and as prior retainers are applied to cover interim accounts.

The following matters must be taken into account in determining what is a reasonable legal fee:

- (a) the time expended by the lawyer;
- (b) the legal complexity of the matters dealt with;
- (c) the degree of responsibility assumed by the lawyer;
- (d) the monetary value of the matters in issue;
- (e) the importance of the matters to the client;
- (f) the degree of skill and competence demonstrated by the lawyer;
- (g) the results achieved;
- (g) the ability of the client to pay.

At any time, you may fire us by giving us written notice to stop all work on your behalf, and paying any balance owing. If the law firm is shown on court documents as your lawyer, then it is not as simple as just telling us to stop all work on your behalf. The court records must be formally changed, in writing. Usually we can file a document which you sign, telling the court and the other side that we are not your lawyer any longer.

Subject, always, to our obligation to ensure proper standards of professional conduct, we can also end the solicitor-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 cause us to end the retainer:

- (a) we cannot get instructions from you;
- (b) you lose confidence in our ability or advice;
- (c) a conflict of interest arises;
- (d) we cannot accept your instructions for ethical reasons;

- (e) you mislead us in a material matter or you lie to us;
- (f) the retainer has not been provided or replaced;
- (g) our accounts remain unpaid for 30 days, and no mutually agreeable arrangements have been made.

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.

It is important for you to understand that the amount of money spent on legal fees in a family law case is **directly** related to the level of conflict in your case, and the way in which that conflict is resolved. It is the lawyer's job to resolve the dispute on your behalf, and on your instructions. Responsible lawyers do not create disputes. The level of conflict in your case will be a direct reflection of the level of conflict in your relationship with your former partner. Our job is to assist you in resolving that conflict, not in making it worse. You must have realistic expectations; however, about the impact the lawyer can have in a case with very high levels of conflict, whether those levels of conflict originate with your former partner, or the lawyer representing your former partner.

**If you have a profile on a social media site, ask yourself: what do my posts say about me and how would a judge look at those posts? There are an increasing number of judicial decisions that have relied upon postings on social media websites to assist in their decisions. For example, a “rant” about your ex spouse, while it might feel good briefly, may be a demonstration of your inability to control yourself in a disagreement over custody. A judge may conclude: “If he/she posts that to a publically available social media website, and your technically savvy child saw were to view it, what are you saying to your child when only they can hear you?”**

**Nothing that you said or wrote before your separation or when you contacted a lawyer is permissible to destroy, as it is part of the electronic evidence that may become relevant, but do yourself a favour and do not create new posts or tweets etc. that you will come to regret later.**

This will confirm that my current hourly rate is \$400.00 per hour, which rate will be billed to you on the basis of time spent on your file on your behalf; however that time may be spent; that such time will include emails, telephone calls, meetings and consultations, preparing domestic contracts, agreements or court documents, etc. Please note that my hourly rate will increase from time to time, as my experience level increases. Should my hourly rate increase during a time while I am representing you, you will be required to sign an Acknowledgment that you agree to such a rate increase. That being said, my hourly rate will not increase beyond 10% annually.

When accounts are rendered, interim or final, a detailed account for professional services rendered, listing all disbursements, will be delivered to you.

In the process of your separation, it will be necessary to exchange documents with your former spouse as part of the disclosure required to resolve the financial issues arising out of your separation. Normally, we think of documents as “papers” that include banking records, bills, tax returns etc. That is all correct, but very often these “documents” come to us and we preserve them electronically. Electronic records are also “documents” that must be provided to your former spouse or his or her lawyer as part of the disclosure process. These “documents” may

include emails about matters pertaining to your case, text messages, e-chats, statements on social media sites etc.

As a simple overview, all of your documents, whatever the format, must be made available to and “preserved” to your former spouse or his or her lawyer the extent that they are relevant to your case. In order to determine what is relevant, it will be necessary to better understand your case. As we determine your case over the next number of weeks and months, it will become much clearer to us. It is your legal obligation to preserve anything relevant for the moment, which certainly includes all financial and banking records, bills, tax returns, Notices of Assessment etc. in whatever format you have normally kept them. Also, all emails, texts and social media posts relevant to this dispute. Please preserve all of these documents, and as we proceed, it will become clearer what may be disposed of and what may be produced as your matter progresses.

Finally, this will confirm that any and all communications (including documentation) between you, the client, and our office, remain privileged and confidential, and can only be waived by you with your expressed, written consent.

If you have any questions concerning the above, please do not hesitate to ask. If you should decide to retain my services, please note that all cheques are to be made payable to Pantalone Family Law.

I HAVE READ *AND* UNDERSTAND THE ABOVE.

Date:

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Signature