

Legal Fees – Retainer or Contingency?

There is an old saying that goes along the lines of “A free lawyer is worth what you pay him”. It got to be an old saying because it is true.

True, good lawyers are expensive, but they are no different than good professionals in any field - be it sports, medicine, accounting, hairdressing, investment advice or a thousand other areas.

The reason good professionals are expensive is because they are in short supply. If everyone could do what they do, everyone would do it. For that matter, if most of the legal profession were as proficient with a hockey stick as they were with documents or cross examination, they would be playing between Bertuzzi and Naslund instead of drafting leases or pleading their client’s cause in the courthouse.

However, just because good lawyers are expensive that doesn’t mean that you can’t afford one if you have no money. There is always the option of the contingency fee. This is where the lawyer agrees to only collect the fee at the end of the case and, even then, only if the case is successful and money is collected.

Contingency fees are allowed by the Law Society because, otherwise, people who could not afford to pay up front would not be able to pursue their claims in the courts.

Generally, lawyer’s fees are charged in one of two ways. Either you pay by the hour or you pay on a contingency fee basis. If you chose by the hour, you will usually be required to provide a significant retainer (say around \$5,000.00 - \$10,000.00 for a lawsuit). The lawyer will pay disbursements incurred from that fund and will also bill his or her time against the money in trust at whatever hourly rate has been agreed between the parties.

If the arrangement is one of contingency, the client is still responsible to reimburse the lawyer for the out-of-pocket expenses (or provide funds in advance to cover the costs) but

there will be no bill for the legal time expended until there is money collected, at which time the lawyer will deduct whatever percentage (plus taxes, of course) from the total amount collected.

Maximum contingency fees are 33 1/3% for motor vehicle actions and up to 50% for other types of actions. All contingency fee agreements, by virtue of the Legal Profession Act, are subject to review and approval by the registrar.

Whichever method of paying the lawyer is chosen, it must be done at the beginning and either way can be advantageous or disadvantageous to either party, depending on which way the action goes. If the action is lengthy and drawn out it is best for the client if it is on a contingency basis. If it is wrapped up quickly and easily, it is most advantageous for the client to pay by the hour. It is vice versa for the lawyer.

The problem, of course, is that neither the client nor the lawyer know at the beginning which way the thing will go. From the client's point of view, the lawyer is either overpaid or underpaid since it rarely works out dead on.

From the lawyer's point of view, however, contingency actions tend to average out to the point where the lawyers end up, after a number of cases, with their usual hourly rates. That's why they do it.

Of course, the better the lawyer, the more and the bigger the wins and the more they make but isn't that the way it should be?