

Law Society of Alberta

# Client Communication Toolkit: Legal Fees

October 2019



## **Disclaimer**

This handbook outlines techniques and strategies to improve your practice but the recommended practices will not fit every situation.

The material presented does not establish a standard of care for lawyers, nor does it provide a complete analysis of the relevant topics. This information is not legal advice and should not be construed as such.

Nothing in this document supersedes the *Legal Profession Act*, Rules of the Law Society of Alberta, Code of Conduct or the Law Society's ability to step in to protect the public interest should the need arise.

This handbook is adapted with permission from the *Price and Transparency Toolkit*, © Law Society of England and Wales. The support and assistance of the Law Society of England and Wales is gratefully acknowledged.

## Introduction

The legal market is as wide as it is deep.

Clients have a myriad of different needs and preferences, so there is no single right way to offer or provide legal services. And with rapid technological changes, what it means to 'practice law' is changing before our eyes.

By highlighting common pitfalls, best practices and recent developments, our goal is to help you meet your clients' expectations and achieve a more successful, satisfying practice for yourself.

Not every aspect of client relations is dealt with in the *Client Communication Toolkit*. In all cases, you should conduct your own research and consider your specific circumstances when planning for future contingencies.

### Pricing Basics

- Not all clients are right for your firm.
- You are not the right lawyer for all clients.
- Get to know your clients and their needs before you try to solve their problems, not after.
- Value is the place where pricing, efficiency and quality meet.

### How Much?

The most common question lawyers receive from clients – both current and prospective – is **“How much is this going to cost me?”**

## What is Fee Transparency?

At its simplest, fee transparency means providing clients with the right information at the right time to let them make informed decisions about the legal services they require.

Transparency is not just about providing more information, as too much can cause confusion. The key is to provide the right information that allows those seeking legal services to assess the value of that service.

Price is not the only determining factor in choosing legal counsel. Most clients are interested in value and understand that something can be more expensive and of good value, and conversely, cheap and of poor value.

Reputation is often the most important factor in choosing a legal services provider – but price, convenience and speed are also considerations.

Ensuring that clients understand the scope and the cost of the work being done is smart business practice. It is also a hallmark of acting professionally.

## Advertising

### Promoting yourself online

When trusted recommendations are not available, clients increasingly go online to find a lawyer.

#### Find It On the Web

The [2019 Clio Legal Trends Report](#)<sup>1</sup> indicates that 17% of respondents visited lawyers' websites and another 17% used online search when looking for a lawyer.

The annual [U.S. Consumer Legal Needs Survey](#)<sup>2</sup> conducted by FindLaw reports that 41% of respondents said they began their search with legal directories and 71% used their phones to find a lawyer or legal service.

Since your firm's website will often be the first point of contact with prospective clients, its importance can't be overestimated. Your firm should enlist a professional for help designing your website.

Similarly, a well-crafted profile on LinkedIn is almost mandatory in today's legal market. A lawyer that doesn't have one may not even make the first cut when clients are seeking to hire new legal counsel.

Closer to home, the Law Society of Alberta operates the [Lawyer Directory](#)<sup>3</sup> to help connect people with lawyers across the province. This service is used by thousands of people - including members of the public, other lawyers, banks, mortgage lenders and real estate agents - to search for lawyers and law firms.

Websites and LinkedIn profiles, like all other promotion, must comply with advertising rules in the Code.

### What distinguishes you from other lawyers?

Many clients assume that all legal service providers are the same and are startled to learn they are not.

They are surprised that only some are regulated and may not be aware of how professional regulation protects them: how the Code of Conduct only applies to lawyers, that all lawyers are required to maintain professional liability insurance, and that different legal service providers have different levels of insurance.

If potential clients are not aware of the differences between legal service providers, they may be inclined to make their selection based on who is simply the cheapest.

Whether you are advertising your services and fee structure online or in person:

- Your firm's advertising must not be misleading, confusing or deceptive.
- You should be wary of providing unreasonable or over-confident assurances, especially when your employment or retainer may depend on advising in a particular way. It is always better to under-promise and over-deliver.
- Advertisements relating to your firm's charges must be reasonably precise for each fee quoted, and must say whether other amounts, such as disbursements and taxes, will be charged in addition to the advertised fee.<sup>4</sup>
- Lawyers are not permitted to advertise that they will make loans to clients, regardless of whether those loans are characterized as loans or cash advances.<sup>5</sup>
- You should avoid estimating charges at an unrealistically low level.

<sup>1</sup> <https://www.clio.com/resources/legal-trends/>

<sup>2</sup> <http://lawyermarketing.findlaw.ca/blog/search-engine-optimization-seo/legal-consumer-behaviour-what-to-expect-in-2017-79/>

<sup>3</sup> <https://www.lawsociety.ab.ca/public/lawyer-referral/>

<sup>4</sup> Code of Conduct, Advertising of Fees, Rule 4.2

<sup>5</sup> Code of Conduct, Making Legal Services Available, Rule 4.1-3

## Resources

[Best Law Firm Websites](#)<sup>6</sup>

[2019 Clio Legal Trends Report](#)<sup>7</sup>

[U.S. Consumer Legal Needs Survey](#)<sup>8</sup>

[Lawyer Directory](#)<sup>9</sup>

[LinkedIn: Maintaining Authenticity In Your Online Profile](#)<sup>10</sup>

Advertising may not:

- Suggest qualitative superiority to other lawyers.

- Raise expectations unjustifiably.
- Imply that a lawyer is aggressive.
- Disparage other persons, groups, organizations or institutions.
- Use testimonials or endorsements that contain emotional appeals.<sup>11</sup>

As each client will have differing circumstances, it may not be possible to advertise fees that match every possible scenario. Some firms advertise their fee for a standard package, while explaining that the cost may be adapted due to the situation faced by the client.

Firms then invite potential clients to contact them to receive the most accurate fee estimate.

<sup>6</sup> <https://lawyerist.com/best-law-firm-websites/>

<sup>7</sup> <https://www.clio.com/resources/legal-trends/>

<sup>8</sup> <http://lawyermarketing.findlaw.ca/blog/search-engine-optimization-seo/legal-consumer-behaviour-what-to-expect-in-2017-79/>

<sup>9</sup> <https://www.lawsociety.ab.ca/public/lawyer-referral/>

<sup>10</sup> <https://www.lawsociety.ab.ca/resource-centre/key-resources/ethics-and-professionalism/linkedin-maintaining-authenticity-in-your-online-profile/>

<sup>11</sup> Code of Conduct, Marketing of Professional Services, Rule 4.2-1

## Pricing Options

### What is a reasonable fee?

Explain to your clients that your fees reflect a wide range of considerations, not just the time you spend on their case. Factors apart from time may include:<sup>12</sup>

- Your experience and ability.
- The difficulty of the matter.
- Whether special skill or service is required.
- The results obtained.
- Special circumstances, such as the postponement of payment, uncertainty of reward, or urgency.
- Whether accepting their retainer prevents you from accepting other work.
- Any fee estimate you provided.
- The client's prior consent to the fee.

How you price yourself is a strategic decision that will have a profound impact on the nature of your practice and the clients you attract.

There are a wide range of approaches to fees in the legal sector including:

#### Hourly:

*Benefit to clients: costs are proportional to the effort required.*

This is the most common type of fee since most matters involve an unknown amount of work due to several factors, many of which are beyond your control.

Hourly rates vary depending on the lawyer's experience and the nature of the case. The client knows up front what they are being charged and can compare rates between lawyers. Total costs, however, cannot always be determined because no one knows in

advance how much time the file will take or how complex the case might be.

#### Flat fees for repetitive or standardized work:

*Benefit to clients: predictability.*

You offer a menu of services with descriptions and corresponding prices.

This may be an option when you know what the retainer will entail with reasonable certainty, such as real estate transactions, foreclosure work, debt collection or incorporating a company.

Flat fees are the simplest fee structure but are only practical when the amount of time and effort required is fairly consistent from one file to the next.

Corporate clients are increasingly looking to flat fee arrangements as a means of controlling their legal spend.

#### Contingency fees:

*Benefit to clients: they don't shoulder all the risk.*

If someone hires you to obtain money for them, such as in injury or accident claims, you can be paid a percentage of whatever you help them recover - the contingency fee - which usually depends on settling the case or winning at trial.

In addition to the contingency fee, the client is expected to pay disbursements.

Contingency fees are popular because they expose clients to less financial risk if their claim ultimately fails or falls short of initial expectations.

When drafting contingency fee agreements, it is essential that you review Rule 10.7<sup>13</sup> of the *Alberta Rules of Court* which sets out specific requirements for all such agreements:

<sup>12</sup> Code of Conduct, Reasonable Fees and Disbursements, Rule 3.6-1

<sup>13</sup> See also Alberta Rules of Court, Part 10: Lawyers' Charges, Recoverable Costs of Litigation, and Sanctions; Subdivision

3, Contingency Fee Agreements

- Must be in writing.
- Must be signed by the lawyer, the client and a witness.
- No fee, calculated as a percentage or otherwise, can be charged on recovered disbursements.
- If you are to be paid any portion of a cost award, the percentage you receive cannot exceed the percentage applicable to the settlement or judgment.

For example, if your contingency agreement fixes your fees at 30% of the damages awarded in a lawsuit, you cannot claim 40% of the associated cost award.

The agreement must also explain:

- The event that will trigger your entitlement to fees.
- How those fees will be calculated and if they include disbursements and other charges.
- That the client owns any cost award and is waiving the right to any portion payable to you under the agreement.
- That the client can ask a review officer to determine the reasonableness of the account and of the contingency fee agreement itself. Unless the Court orders otherwise, the contents of the agreement remain confidential.
- That the client can terminate the contingency fee agreement within five days without incurring any liability for your fees.

## Resources

[Contingency Fee Issues - The Calculation of Fees<sup>14</sup>](https://www.lawsociety.ab.ca/resource-centre/key-issues/contingency-fee-issues)

<sup>14</sup> [https://www.lawsociety.ab.ca/resource-centre/key-](https://www.lawsociety.ab.ca/resource-centre/key-issues/contingency-fee-issues/)

## Percentage fees/value-added fees:

*Benefit to clients: predictability, proportionality.*

Fees can be proportional to the value of a specific asset or transaction, such as when buying or selling a business or property, collecting a debt, probating a will or executing an estate.

Value billing refers to the value of the legal services to the client, to be determined through discussion with the client. Working together, you and your client collaborate to assess the client's needs and develop a strategy to produce the most effective representation.

## Volume-based discount:

*Benefit to clients: predictability, efficiency from increased exposure to their work.*

Clients who purchase legal services in bulk may receive a volume discount. Rates may decrease once certain volume thresholds are met.

Institutional clients often have the bargaining power to secure discounts in return for providing a steady supply of work.

The fee typically requires periodic adjustment.

## Monthly/annual retainer:

*Benefit to clients: predictability.*

A general retainer provides unlimited access to a lawyer. It is payable whether you are called upon or not.

General retainers must be confirmed with a written agreement signed by the client acknowledging that:

- The money is non-refundable and belongs to you immediately upon receipt.
- You are not obliged to account for it or render services with respect to it.
- Services may never be rendered in respect of the money.

[resources/practice-management/contingency-fee-issues/](https://www.lawsociety.ab.ca/resource-centre/key-issues/contingency-fee-issues/)

You may only deposit a general retainer directly into your general account if these requirements are met. Retainer funds must otherwise be held in a trust account.<sup>15</sup> For lawyers operating without a trust account pursuant to an exemption<sup>16</sup>, this can be a significant issue that must not be overlooked.

### Hybrid/mixed rates:

*Benefit to clients: different approaches may help clients recover costs from their customers; clients may use different counsel within the firm for the most appropriate tasks.*

Different rates or pricing structures may apply to different types of work. For example, percentage rates for real estate, hourly fees for litigation, fixed fees for corporate work.

### What is a ‘disbursement’?

Lawyers understand that disbursements are out-of-pocket expenses incurred to advance a client’s file. However, many clients are not familiar with the term. It is better to explain it ahead of time than to upset your clients with unexpected charges appearing on their bills.

Statements of account must clearly and separately detail fees and disbursements.<sup>17</sup>

You can only charge as disbursements those items that you actually pay or are required to pay to a third party on a client’s behalf.<sup>18</sup>

The following do not qualify as disbursements:

- Annual subscription costs and transaction fees for using online solutions to manage business processes.
- In-house administration charges such as postage and photocopying.

- Other overhead costs.
- Professional indemnity insurance.

If you want to charge for such things as file opening charges, word processing or other costs that are not disbursements, you can include these as “Other Charges” on your accounts, provided the client agrees.

### Converting a fee agreement

Just as it is never too late to begin exercising, you can convert a vague or unwritten fee agreement into one that provides better clarity and more reasonable compensation.

To do this, bill the client for any work you have done to date based on the fee arrangement you agreed to when you took on the case. Give them reasonable warning that, going forward, you wish to charge for your services at a different rate or by some other method. If they disagree, either one of you may decide to terminate the relationship.

If you cannot come to terms and you choose to end the relationship altogether, the usual rules about not prejudicing your client’s interests apply, as in all withdrawals.<sup>19</sup>

### Fee Reviews

The reasonableness of any retainer agreement and of a lawyer’s charges can be assessed by the Review/Assessment Office through the Courts for up to six months (unless extended by the court) from the time the retainer agreement terminates, or from when you send the account to your client.<sup>20</sup>

It is good practice, particularly when acting for individuals, to consider telling your clients in your retainer agreement or an accompanying letter at that the *Rules of Court* give them the

<sup>15</sup> Law Society of Alberta Rules, Rule 119.41(1)

<sup>16</sup> Law Society of Alberta Rules, Rule 119.16

<sup>17</sup> Alberta Rules of Court, Lawyers’ Charges s.10.2(3); Code of Conduct, Statement of Account, Rule 3.6-3

<sup>18</sup> Law Society of Alberta Rules, Rule 119(1)(f); Code of Conduct, Statement of Account, Rule 3.6-3.

<sup>19</sup> Code of Conduct, Withdrawal from Representation, Rule 3.7-1

<sup>20</sup> Alberta Rules of Court], Part 10: Lawyers’ Charges, Recoverable Costs of Litigation, and Sanctions; Subdivision 4 Right of Review; Rules 10.9, 10.10, 13.5

right to review your charges. The precise wording of Rules 10.9 and 10.10 could be included and the client advised that an extension of time is not easily obtained.<sup>21</sup>

## Payment Options

### Payment by credit/debit card

The ability to purchase goods and services electronically has become almost universal. You can take advantage of this by offering clients the option of paying with a credit or debit card. This may give them access to legal services they may otherwise be unable to afford and avoids unpaid fees and cash flow problems for you.

While the fee for electronic payments may seem high at first, remember that accepting alternate payment methods will get you paid faster, reduce the number of files you send to collection and result in fewer bad debts.

You must deposit all credit and debit receipts into your trust account within two banking days, so you cannot hold a blank, signed authorization as security for your fees and disbursements.<sup>22</sup>

As for the terminals you will need, you have three options:

1. One terminal connected to your trust account. You deposit all payments into trust and transfer any fee payments to your general account.
2. Two terminals with separate merchant numbers, one connected to your trust account for trust receipts and one to your general account for general receipts.
3. One terminal that allows two separate merchant numbers – one for trust and one for general. This option has only become available recently and allows you to use

one machine for both trust and general funds. Please note:

- This can only be done through a point of sale terminal provider and not directly through a bank.
- You must have your general and trust account at the same bank, so they can take any associated fees out of the general account only.

### Bartering Legal Services

You may decide to provide legal services in return for goods or services provided by your client. For example, an I.T. consultant may be cash-poor but is willing to set up the computer network at your office if you handle the consultant's divorce. An auto mechanic may be willing to work on your car in return for handling a house purchase.

#### Resources

[\*Bartering Legal Services\*<sup>23</sup>](#)  
[\*Fee Payment by Third Party\*<sup>24</sup> \(L.S.O.\)](#)

Bartering arrangements pose unique challenges, not the least of which is assessing a value to whatever is being exchanged. Documenting the transaction accurately is critical.

You cannot accept trust funds or any other pre-payment of legal services in a barter arrangement.

If you accept payment through a barter arrangement, it is strongly recommended that you confirm the terms in a written agreement that includes:

- The client's informed consent.
- Details of the legal services you will provide.

<sup>21</sup> *West v Logie Family Law*, 2018 ABCA 255 at para. 34

<sup>22</sup> Law Society of Alberta Rules, Rule 119.44(a).

<sup>23</sup> <https://www.lawsociety.ab.ca/bartering-legal-services/>

<sup>24</sup> <https://www.lsuc.on.ca/FeePaymentbyThirdParty/>

- The value of the service.
- Details of how and when you will be paid.
- Confirmation that a statement of account will be provided to the client.

### Payments by Third Parties

Occasionally, your client's parent, spouse, friend or business partner may offer to pay the legal bill.

There is nothing objectionable about this, but you need to be sure you don't reveal any confidential information – the fact that you are acting for someone, the nature of the retainer, how much is owed – without prior authorization from your client.

Try to have an agreement with the payor and your client about what will happen to any unused retainer at end of the file, what happens to an unused retainer if the client terminates your services, and what right, if any, the payor will have to demand repayment, regardless of whether your retainer remains ongoing.

### Payments to Third Parties<sup>25</sup>

You can pay a referral fee to another lawyer who sends a client your way, so long as the referral was not the result of a conflict of interest, the fee is reasonable, does not increase the fee charged to the client, and the client is informed and consents.

You may not, however, share your fees with non-lawyers or compensate non-lawyers for referring work to you. You may not compensate a non-lawyer for a client referral by paying a percentage of your fees or providing compensation on a "per file" basis. Lawyers are permitted to engage referral services but must ensure that the referral service complies with the Code of Conduct. Subscription fees must be calculated on a flat fee basis.

### Debt Collection

If you are unable to obtain payment on accounts through other means, you may consider suing your client for fees or engaging a collection agency to assist you.

This is not a decision to be taken lightly. Many insurance claims and complaints to the Law Society are made in response to lawyers initiating legal action against their clients. The lawyers then find themselves with an unpaid account, plus they must spend time defending themselves and may potentially pay an insurance deductible and higher insurance premiums.

If you feel collection steps are necessary, you may disclose confidential information to establish or collect the amounts owed but must not disclose any more than is required.<sup>26</sup>

<sup>25</sup> Code of Conduct, Division of Fees and Referral Fees, Rule 3.6

<sup>26</sup> Code of Conduct, Disclosure of Confidential Information by Lawyers, Rule 3.3- 5

## More Information

Various departments of the Law Society are available to help you with the challenges and opportunities described here. Feel free to contact them at any time.

### Law Society of Alberta

Suite 700, 333 - 11<sup>th</sup> Avenue SW  
Calgary, Alberta T2R 1L9  
1.800.661.9003 (toll free) or 403.229.4700  
Office hours: Mon – Fri 8 a.m. – 4:30 p.m.

### Practice Management

Email: [Practice Management Department](#)  
403.229.4750 or 587.393.2167

### Early Intervention

Email: [Early Intervention Department](#)  
403.229.4745

### Practice Advisors Office

1.866.440.4640 (toll free) or 587.390.8462

### Trust Safety

Email: [Trust Safety Department](#)  
403.228.5632

### Membership

Email: [Membership Department](#)  
403.229.4781

### Indigenous Initiative Liaison

Email: [Indigenous Initiative Liaison](#)

### Alberta Lawyers Indemnity Association (ALIA)

Email: [ALIA](#)  
1.800.661.1694 (toll free) or 403.229.4716