

FORM 1

CONTINGENT FEE AGREEMENT

Agreement made this _____ day of _____, 20__.

B E T W E E N:

(the Lawyer or Firm)
"the Lawyer"

- and -

(the Client and name of person for whom
services to be performed)
"the Client"

1 The Client retains the Lawyer and the Lawyer agrees to represent the Client with respect to the following matter ("this matter"):

(Give full description of the legal services to be performed)

2 The Lawyer agrees to act in the best interests of the client in performing legal services with respect to this matter, including making every reasonable effort to reach a settlement on behalf of the client and commencing appropriate legal proceedings; including, inspection of documents, conduct of examinations for discovery, preparation for trial, conduct of trial, conduct of appeals, and the retention of experts or other assistance necessary for the proper conduct of the legal proceedings.

3 Notwithstanding section 2, the Lawyer shall keep the Client fully informed at all times of the status of this matter, including steps to be taken in any legal proceeding, and shall not finalize any settlement without the approval of the Client, or take any significant steps in the legal proceedings, including the retention of experts, without also obtaining the Client's approval.

4(1) In consideration of the legal services to be performed by the Lawyer for the Client under this agreement, the Client agrees to pay to the Lawyer

- (a) a fee of _____% of the total amount recovered for the Client in this matter, exclusive of costs, charges, disbursements and taxes directly incurred on behalf of the Client in recovering such amount, either by settlement or by any legal proceedings;
- (b) in the event that a decision giving judgment in this matter is appealed to a higher court, a fee of _____% of the total amount recovered for the Client in this matter, exclusive of costs, charges, disbursements and taxes directly incurred on behalf of the Client in recovering such amount;

(Paragraph (b) is optional and can be inserted or omitted at the discretion of the lawyer)

- (c) in accordance with section 5, all costs, charges, disbursements and taxes directly incurred on behalf of the Client in recovering damages; and
- (d) all taxes imposed by law on fees for legal services.

4(2) It is understood between the Lawyer and Client that any amount recovered in this matter as a subrogated claim on behalf of a third party for medical, hospital or related expenses, shall not be included in the amount recovered on behalf of the Client under subsection 4(1) for the purpose of calculating fees or for determining costs, charges, disbursements and taxes, but is subject to separate and independent arrangements between the Lawyer and the third party.

5(1) The Client agrees:

- (a) that all costs, charges, disbursements and taxes, or a portion thereof, recovered on behalf of the Client, either by settlement of this matter or by judgment of a court, shall be applied directly against the total amount of costs, charges, disbursements and taxes incurred by the Lawyer on behalf of the Client in pursuing the matter, and
- (b) that any balance to be paid for costs, charges, disbursements and taxes remaining after the deduction of amounts applied under paragraph (a) shall be paid to the Lawyer from the amount recovered for special or general damages.

5(2) The Client agrees to pay to the Lawyer interest at the rate provided under the Rules of Court on judgments, on all costs, charges, disbursements and taxes paid directly by the Lawyer, from the date of actual payment to the date of recovery of payment, if any.

6(1) The Client agrees that in the event it is not possible to settle this matter, or no amount is recovered in any legal proceedings, to pay to the Lawyer all costs, charges,

disbursements and taxes incurred by the Lawyer on behalf of the Client.

OR

6a(1) In the event it is not possible to settle this matter, or no amount is recovered in any legal proceedings, the Lawyer is responsible for all costs, charges, disbursements and taxes incurred by the Lawyer on behalf of the Client.

(Select one of (1) as agreed between Lawyer and Client)

6a(2) In the event that costs under the Rules of Court are awarded against the Client in any legal proceeding, the payment of all such costs is the full responsibility of the Client and not the Lawyer.

7(1) Upon the settlement of this matter, or upon the completion of any legal proceedings in which the Client recovers judgment, the Lawyer shall provide the Client with an account in writing separately setting out the amounts recovered for special and other damages, and for costs, charges, disbursements and taxes, and showing the amounts charged to the Client under this agreement and the balance payable to the Client.

7(2) Upon approval by the Client of the account under subsection 7(1) the Lawyer may deduct the total amount owing to the Lawyer and pay the balance to the Client, or as the Client directs.

8(1) In the event the Client discharges or otherwise terminates the services of the Lawyer without adequate cause, before settlement is reached or judgment of a court is obtained, the Lawyer is entitled to recover from the Client fees on the basis of the Lawyer's normal hourly rate for such a matter, and for costs, charges, disbursements and taxes, to which the Lawyer would be entitled if there was no contingent fee agreement, or such greater amount as may be allowed by a reviewing officer.

8(2) The Lawyer's bill under subsection 8(1) may be enforced as a lien against any settlement or judgment recovered on behalf of the Client in this matter subsequent to the Lawyer being discharged or otherwise terminated under subsection 8(1).

9(1) The Lawyer may withdraw from representing the Client under this agreement on reasonable notice to the Client, provided that upon such withdrawal the Lawyer shall not be entitled to any fee for services or for payment of any costs, charges, disbursements and taxes incurred on behalf of the Client.

9(2) If the Lawyer withdraws under subsection 9(1) because of cause created by the Client, the Lawyer is entitled to recover from the Client fees on the basis of the Lawyer's normal hourly rate for such matter, and for costs, charges, disbursements and taxes, to which the Lawyer would be entitled if there was no contingent fee agreement, and the

Lawyer's bill may be enforced as under subsection 8(2).

10. If the Client settles this matter without the knowledge or participation of the Lawyer, the Client shall pay to the Lawyer the fees agreed under section 4 based on the final recovery received by the Client.

11. The Lawyer makes no warranty or representations concerning the successful outcome of this matter, or that the Lawyer can recover any amount for costs, charges, disbursements and taxes that will be incurred on behalf of the Client. Any statements of the Lawyer in this regard are statements of opinion only, based on the Lawyer's best judgment of the issues.

12. The Client's address and telephone number for receipt of all communications in connection with this agreement are

13. This agreement shall be governed by the law of New Brunswick.

14. The Client is entitled to receive a copy of this agreement at the time of signing, and acknowledges receipt.

Dated this ____ day of _____, 20__.

(Witness)

(Lawyer or Law Firm)

(Witness)

(Client)

FOOTNOTES

These footnotes are part of Form 1 and are to be included with all contingent fee agreements.

1. The fees allowed under section 4, paragraph (a) shall not exceed 25 percent and under paragraph (b) 30 percent. All agreements that exceed these percentages, or otherwise contain terms different from Form 1, shall be approved by a reviewing officer or the agreement is void and not enforceable.
2. Any contingent fee agreement is subject to review by a reviewing officer under subsection 83(7) of the Law Society Act, 1996, within 90 days after
 - (a) the agreement is made; or
 - (b) the retainer between the Lawyer and Client is terminated.
3. In the event of a dispute, any bill under a contingent fee agreement is subject to review by a reviewing officer under the Rules For Review of Lawyers Bills which sets out the procedure to be followed.
4. The Lawyer's "normal hourly rate" as referred to in 8(1) and 9(2) may be provided to the client in a letter to accompany this Agreement.
5. Any Lawyer or Client having questions with respect to contingent fee agreements may contact the Executive Director at the Law Society Office:

68 Avonlea Court
Fredericton, New Brunswick
E3C 1N8

Telephone: (506) 458-8540