

## **News Release**

### **Law Society publishes recommendations on contingency fees**

**Toronto** — The Law Society today released a report on transforming the way contingency fees are managed in Ontario’s legal professions. The report puts forward several recommendations to protect access to justice for the public, while ensuring protection from unscrupulous practices and unreasonable fees.

Introduced in Ontario over a decade ago, contingency fees provide members of the public with access to justice by allowing clients not to pay legal fees until a settlement or trial results in damages recovery. The lawyer or paralegal usually receives a fee calculated as a percentage of what is recovered.

“The existence of contingency fees is critical in opening the doors to justice for all Ontarians, no matter your financial situation,” says Malcolm Mercer, Chair of the Law Society’s Advertising and Fee Arrangements Issues working group. “The recommendations we are proposing focus on transforming the way contingency fees work, providing equal access to justice for all individuals regardless of their ability to pay, while increasing clarity and visibility, and consumer protection.”

The recommendations, which will be tabled at Convocation, were developed by the Law Society’s Advertising and Fee Arrangements Issues Working Group and are designed to regulate contingency fees to facilitate legal representation at a fair and reasonable cost, and include:

- The introduction of a mandatory standard contingency fee agreement;
- A ‘Know Your Rights’ guide for the public, which contains information on consumer rights in relation to contingency fee agreements;
- Disclosure requirements on completion of an agreement which provide the consumer with the following:
  - a clear breakdown of the final settlement or award, the net amount going to the client, disbursements costs, legal fees and taxes;
  - a statement explaining the reasonableness of the fee in light of factors such as legal complexity, the results achieved and the risk assumed, including the risk that the matter would not have been successful; and
  - a statement that the client has the right to assess the account.

- Requirement for legal professionals to publically disclose the maximum contingency fee percentage they charge by practice area, allowing increased transparency, and the ability for individuals to shop around for representation; and
- New reporting information will be required on licensees' (lawyers and paralegals) annual reports to the Law Society. Aggregate data will be shared with the public and policy makers to better inform future consumer choice and policy decisions.

"The access to justice benefits of contingency fees are well recognized. They provide a way for all people in Ontario to access the justice system without facing up-front costs and risks," Malcolm Mercer explains. "For personal plight cases, such as motor vehicle accident cases, the contingency fee arrangement provides an option that assists particularly vulnerable clients who otherwise may be deprived of their ability to advance their claims."

### **Contingency Fee Caps**

The Law Society examined the idea of capping contingency fees, but found doing so was not in the public interest as caps would likely pose a barrier to accessing legal services.

"When looking at the issue of caps, we were concerned that the unintended consequence would deny some victims benefits and reduce claims in more modest cases," says Malcolm Mercer. "The empirical evidence from the US, where caps have been introduced in several states, indicates that lawyers who rely on contingency fees often stop representing certain clients and handle fewer cases generally. If it is no longer viable from a practical or business standpoint to advance certain types of claims, these cases end up falling through the cracks, disproportionately impacting claims from lower income groups and access to justice for the middle class."

The recommendations on contingency fees build upon the Law Society's changes to referral fees and advertising rules, which came into effect earlier this year. These measures, along with the strengthening of the rules governing the advertising of legal services, increase transparency for the consumer and add additional new public protection measures.

More information, including a summary of the report is available online (insert link).

*The Law Society regulates [lawyers and paralegals](#) in Ontario in the public interest. The Law Society has a mandate to protect the public interest, to maintain and advance the cause of justice and the rule of law, to facilitate access to justice for the people of Ontario and act in a timely, open and efficient manner.*

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