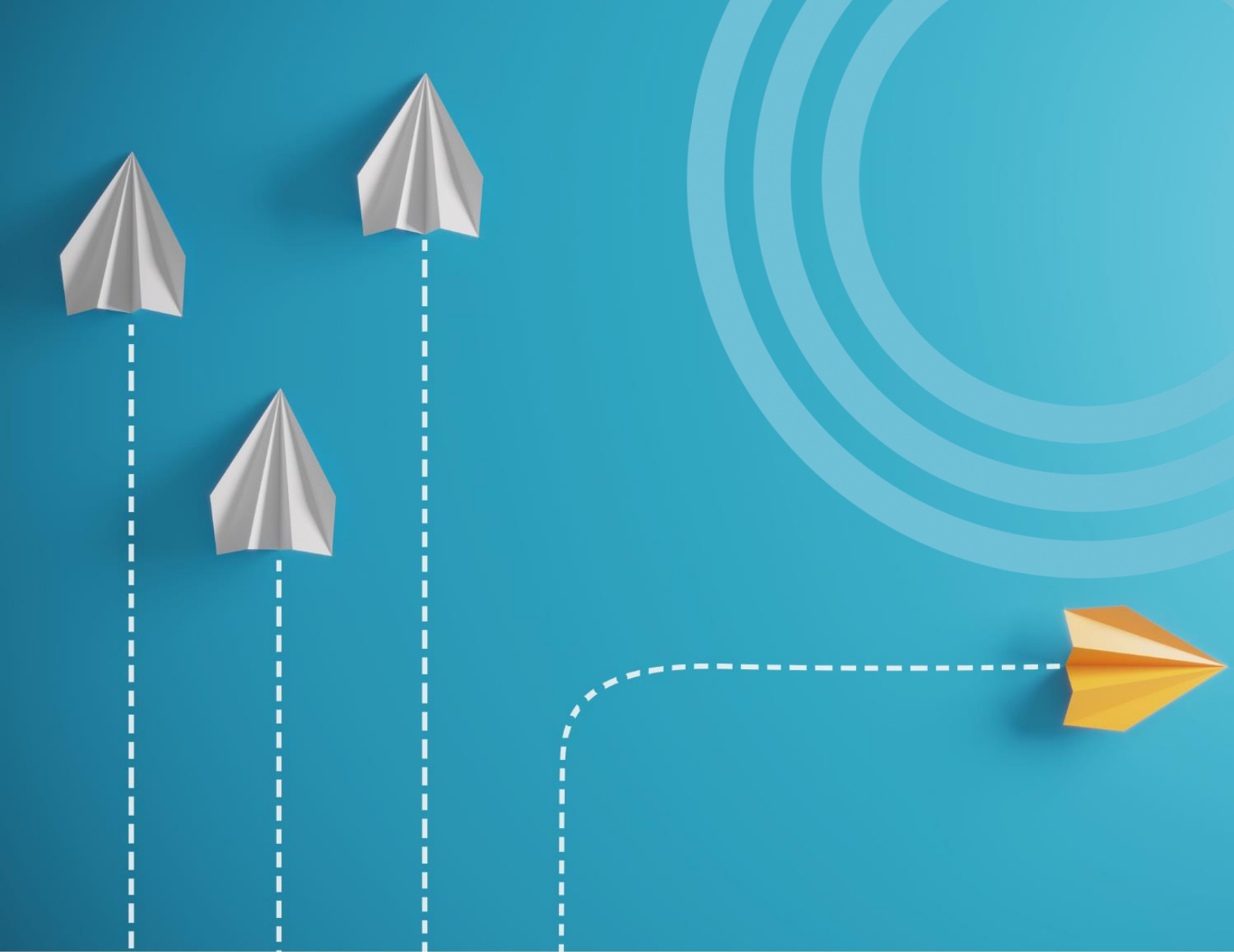




Contingency fees: What you need to know

A guide from the Law Society of Ontario



Law Society
of Ontario

Barreau
de l'Ontario

What is a contingency fee?

When you have a legal matter, you may need to hire a lawyer or a paralegal. If you think you could receive money for your matter, you may be able to pay for their services on a contingency basis. That means you only pay legal fees if you receive money because you win your case or get a negotiated settlement. If you lose your case, you do not pay legal fees, although you may have to pay for other legal expenses.

Your lawyer or paralegal will usually charge a percentage of the money that you get as a contingency fee, plus HST.

Other ways of paying legal fees

Contingency fees are just one way of paying for the services of a lawyer or paralegal. Other options could include paying an hourly rate or paying a flat rate (one fixed amount) for the legal services.

How this guide can help you

Read this guide carefully **before** you enter into any agreement about contingency fees. The contingency fee agreement is a document that is legally required. It is a signed contract and you are bound by its terms.

This guide will help you to:

- understand your rights
- ask important questions
- understand the different types of contingency fee agreements
- compare what different lawyers and paralegals are offering
- decide if contingency fees are right for you.

Lawyers and paralegals are required to give you this guide when you first meet with them to discuss contingency fees.

Can lawyers and paralegals offer contingency fee agreements for any type of legal matter?

No. They cannot offer contingency fee agreements for family law or criminal matters. They can for other matters where their client might receive money. This money might take the form of a negotiated settlement or an award ordered by a court or by a tribunal (such as the Workplace Safety and Insurance Board).

Lawyers can represent clients on any matter that can be paid for with a contingency fee. Paralegals can offer a contingency fee only for small claims court and matters taken to an administrative tribunal.

What are the advantages and disadvantages of contingency fees?

There are two advantages to having a contingency fee agreement. First, you don't pay fees for legal services up front. Second, if you lose your case, you will not have to pay legal fees to your own lawyer or paralegal.

There are also possible disadvantages. If you settle or win your case early in the process, the percentage of the award your lawyer or paralegal charges you for legal fees may be higher than if you had been paying hourly or fixed fees.

Another thing to think about is what would happen if you or your legal professional decide to end the contingency fee agreement before the case concludes. This could happen, for example, if you decide to hire a different lawyer or paralegal. It is likely that you would have to pay them fees for work they have already done, at an hourly rate, plus any other legal expenses. This condition is written into the contingency fee agreement.

Keep in mind that there are other legal expenses besides fees for lawyers or paralegals. Your contingency fee agreement may not cover these.

What are the other legal expenses besides fees?

The fees you pay to a lawyer or paralegal usually only cover the cost of the time they spend working on your case. There are two other important types of legal expenses: disbursements and costs.

Disbursements

These are expenses that your lawyer or paralegal pays on your behalf to third parties for items and services needed to support your case. Generally, disbursements do not include the ordinary costs of providing legal services. For example, overtime or fees for law clerks or administrative assistants cannot be charged to you as disbursements. However, disbursements can include expenses approved by a court or tribunal, or authorized by a regulation known as “Tariff A,” even if these expenses relate to the costs of providing legal services.

Examples of disbursements that can be validly charged to you include:

- court filing fees
- hiring court reporters
- costs of transcripts
- paying for expert witnesses, such as medical experts
- cost of copies of documents prepared for the use of the judge (allowed by Tariff A).

You will likely have to pay for disbursements even if you lose your case.

When do I pay for disbursements?

It is most common for the lawyer or paralegal to pay for disbursements and then recover the money from you when your case concludes. In some cases, however, you may have to pay for disbursements as you go. Your agreement should state clearly when and how you agree to pay for disbursements.

Disbursements can be substantial sums of money. Your lawyer or paralegal has a duty to tell you if there are major expenses in your case and the impact they will have on the settlement or award you may receive.

Costs

In legal proceedings, “costs” are the money that a court or tribunal may order the person who loses the case to pay to the person who wins the case (or a stage in the case). Costs can also be included as part of a settlement. In most cases, these awarded costs pay only a part of a person’s legal expenses.

If you lose your case, you may have to pay costs to the successful party. Having a contingency agreement does **not** protect you from having to pay costs. You should talk with your lawyer or paralegal about the risks involved in your case.

If you win or settle your case, you may receive costs. You can use this money to help pay for your legal expenses. Your lawyer or paralegal should try to get as much money for you in costs as they can.

How would a deductible affect my award or settlement?

If you were injured in a motor vehicle accident, you may be entitled to sue for your pain and suffering (also known as ‘general damages’). If the general damages in the award or settlement are under a certain amount, a ‘deductible’ may apply – reducing how much of the award or settlement is paid by the other side’s insurance company. This deductible is ‘statutory,’ meaning that it is set by insurance legislation. Before signing an agreement, ask your lawyer if these insurance rules could apply to you to reduce how much you are able to recover.

How do legal professionals set contingency fees?

The lawyer or paralegal usually sets a percentage of the award or settlement as the contingency fee. The percentage also applies to any amount you receive for costs, but it does not apply to any amount you receive specifically to help you pay for disbursements.

The percentage can be higher or lower based on several factors.

For example, you may have a straightforward case that they think you are likely to settle early in the proceeding. In this case, the percentage may be lower.

On the other hand, if your case is complex, and your lawyer or paralegal are taking on a lot of risk because you might lose, they may set the percentage of the contingency fee higher.

The main factors they consider are:

- how much time they think they will have to spend on your case
- the risk that you might not win your case
- how much money they think you might get as a settlement or award.

The legislation sets the maximum fee that a lawyer or paralegal can charge. The maximum fee cannot be more than the amount you receive from your award or settlement. To calculate the maximum fee allowed, the award or settlement will include costs but does not include disbursements and taxes.

In all cases, the fee must be fair and reasonable.

In exceptional situations, your legal professional may ask, in the contingency fee agreement, for the right to choose between the contingency fee or the costs awarded after a trial or hearing.

Are there different ways of setting up contingency fees?

Yes. Some contingency fee agreements cover all the legal fees for every stage of a case from start to finish. Others cover only some of your legal services.

Here are some examples of different ways the contingency fee could be structured:

A **fixed percentage** contingency fee is one where the percentage that the legal professional receives remains the same all through the proceeding.

A **staged** or **graduated** contingency fee is one where the percentage that the lawyer or paralegal receives changes, depending on the stage at which the matter is resolved. If it is resolved at an early stage, the percentage is lower. In later stages, the percentage goes up. This is to take into account the additional work the lawyer or paralegal does as the case goes on.

A **partial** contingency fee is one where you pay for some legal services at the outset of your case or as it proceeds, **plus** a contingency fee if you win or settle. The fee payments may be discounted (lower) than the usual rate because you have a partial contingency agreement.

How can I compare what lawyers and paralegals are offering?

It is best to compare the contingency fees that lawyers and paralegals are offering **before** you sign any agreement.

Lawyers and paralegals have to post the maximum contingency fee they charge on their websites or tell you when you contact them. Many lawyers and paralegals offer a free consultation before taking on your case to discuss your options.

For help finding a lawyer or paralegal, you can use the [Law Society of Ontario's website](#). From the home page, select "Public Resources," then select "Finding a Lawyer or Paralegal."

You have the right to know about your legal professional's education and experience. Many lawyers and paralegals will describe this on their websites. You can also ask about their experience in cases similar to yours.

Who will make the decisions about my case?

You have the right to make all critical decisions about how your case is conducted. For example, your lawyer or paralegal has an obligation to ask for your instructions about critical decisions such as accepting a settlement or having a hearing.

Can we end the agreement after it is signed?

You have the right to end the agreement at any time.

Your lawyer or paralegal can also end the agreement, but only in certain circumstances. These include when:

- You tell them to do something that goes against their professional duty
- You lie to them
- You refuse to accept their advice on an important point
- You persist in being unreasonable or uncooperative
- You do not pay your bills in a timely manner
- They cannot get the instructions they need from you to pursue your case
- They feel that acting for you places them in a conflict of interest.

No matter who ends the agreement, you may still owe your lawyer or paralegal for their work and expenses so far, plus HST. They have the right to take this money from your settlement or award at the end of your case. These terms will be set out in the agreement.

If I win or settle my case, how and when do I get the money?

Money that has been awarded by the court or negotiated in a settlement will usually be paid to your lawyer or paralegal. They hold it in trust for you.

Before they give the money to you, they prepare an account statement showing what they will deduct for fees, disbursements and applicable taxes. The account statement must clearly set out:

- The amount of the settlement or award
- The amount of the contingency fee and amounts for any other legal services that they will deduct, plus HST
- The amount of all outstanding disbursements they will deduct, plus any applicable taxes
- The net amount of money that you will receive after the deductions
- The way you will receive the money.

The account statement should clearly explain why the fees and deductions are reasonable, and what you can do if you feel that they are not reasonable.

In some cases, such as those that go before the Workplace Safety and Insurance Board, benefits may be paid directly to you. You would then be responsible for paying your lawyer or paralegal.

If you are a party under disability represented by a litigation guardian, a judge must approve the agreement. This approval must happen either before the agreement is finalized or as part of the court's approval of a settlement agreement or a consent judgment. When the court reviews a settlement agreement or a consent judgment, the court must also approve the legal fees, costs, taxes and disbursements.

If you would like additional information about contingency fees, please visit the [Law Society of Ontario's website](#).

Some examples of how contingency fees work

Here are some imaginary situations where a client receives a settlement or award. In each example, they pay a legal professional on a contingency fee basis. **The examples do not predict what might happen in your case.** They are just to help you understand how contingency fees are calculated and what a final account statement might look like.

Example #1

Stella was injured at work. However, Stella's worker's compensation claim was refused. Stella hired a paralegal to help her appeal to the Tribunal.

Following a hearing before the Tribunal, Stella's claim was allowed. As a result, the Workplace Safety and Insurance Board (WSIB) granted entitlement to Loss of Earnings benefits retroactively to the date of Stella's accident. This resulted in a lump sum payment of \$32,048.59 plus \$3,525.34 in interest.

The paralegal's fee for service was 30%. There were no disbursements incurred. When the money was paid by the WSIB, the paralegal prepared a final account statement for Stella:

Loss of Earnings Retroactive Lump Sum Award (including interest)	\$35,573.93
Less: Contingency fee at 30% of \$35,573.93	(\$10,672.18)
Less: HST on contingency fee at 13%	(\$1,387.38)
Outstanding disbursements	\$0
Stella will receive:	<u>\$23,514.37</u>



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Example #2

Blanche was fired from her job. Blanche believed the dismissal was unfair. Blanche hired a lawyer to help her go to court to get compensation for lost wages.

Blanche and her lawyer prepared their case. After the examination for discovery, the employer offered to settle. This meant they would not have to go to court.

Blanche and her lawyer settled for \$100,000 net of taxes. They did not negotiate any extra or separate money to cover legal fees or disbursements.

The lawyer's contingency fee for settling at this stage was 20%. In bringing Blanche's case her lawyer spent \$13,000 in disbursements.

The employer paid \$100,000 to Blanche's lawyer "in trust" and in turn, Blanche's lawyer distributed the money in the following way:

Settlement amount:	\$100,000
Less Disbursements incurred:	(\$ 13,000)
Less fee (20% of \$87,000 being the amount paid less disbursements):	(\$ 17,400)
Less HST on fee (13% of \$17,400):	(\$ 2,262)
Less HST on Disbursements (13% of \$13,000):	(\$ 1,690)
Blanche will receive:	<u>\$ 65,648</u>

Example #3

Stanley had an operation that went badly. He believed that there was medical malpractice. Stanley hired a lawyer to help him get compensation.

Stanley's lawyer advised him that the other side would likely want to fight this matter out in court. Stanley's lawyer also felt there was a risk that they might not win the case. But Stanley's lawyer believed it was important that Stanley's case be heard. Stanley's lawyer offered to represent him on a contingency basis at a fee of 40%. Stanley agreed to pay for his disbursements at the end of the case.

After a hearing of several days, the Superior Court decided in Stanley's favour. He was awarded \$300,000, plus \$175,000 in costs (\$100,000 for legal fees and \$75,000 for disbursements). By then, Stanley's lawyer had incurred \$97,500 in disbursements.

It took some time before the money was finally paid, so the court required the other side to pay \$23,750 in interest on it as well. Stanley's lawyer put all the money in a trust account. He prepared a final account statement for Stanley:

Amount awarded (\$300,000 damages + \$100,000 costs, \$75,000 disbursement + \$23,750 in interest)	\$498,750
Less: Amount ordered by Court for disbursements (including HST):	(\$ 75,000)
Less: Contingency fee of 40% on \$423,750 (total award less disbursements awarded)	(\$169,500)
Less: HST on contingency fee at 13%	(\$ 22,035)
Less: Extra disbursements not subject to award by court	(\$ 22,500)
Less: HST on extra disbursements at 13%	(\$ 2,925)
Stanley will receive:	<u>\$206,790</u>

Some questions to ask when you are comparing contingency fees

Use this list of questions as a starting point when you have initial consultations with lawyers and paralegals. Your notes can help you make a choice among legal professionals.

Experience

1. What experience do you have with cases like mine?

What the agreement covers

2. What legal services does the contingency fee cover?

Calculating the contingency fee

3. What percentage will you charge me if I receive money at the end of my case?



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4. How do you calculate the percentage for your fee?

5. Based on your experience, do you think that we can resolve this case in the early stages? Is the percentage lower if I am likely to win or settle my case early?

Disbursements

6. Who will be paying for disbursements?

7. If I am paying for disbursements, what type of disbursements do I have to pay for?

8. If I am paying for disbursements, when do I pay for them?

9. Will you take a lower contingency fee if I pay for my disbursements throughout the course of the case?



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10. Can you give me an estimate of how much disbursements could end up costing in my case?

11. What happens if I become unable to pay for disbursements?

Costs

12. If I win my case, will I likely be awarded costs?

13. If I lose my case, is it likely I will have to pay costs?

14. Based on your experience, how much in costs will I have to pay to the other side if I lose?

Motor vehicle accident cases

15. Will a deductible apply to my motor vehicle accident case?

16. If a deductible applies to my case, how could it affect my award or settlement?

My settlement or award

17. If I win or settle, how will I receive my settlement or award money?

18. Based on your experience, how long will I have to wait for my settlement or award?
