

RETAINER AGREEMENT REGULATION



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1. AUTHORITY

1.1 This Regulation is enacted pursuant to section 3.1 of the By-law.

2. PURPOSE

2.1 The purpose of a Retainer Agreement is to set out the exact duties of the Licensee and the Client so that all parties to the Agreement have clear expectations regarding what will be provided, how the service will be provided, and at what cost.

3. DEFINITIONS

3.1 In this Regulation, capitalized terms, unless otherwise defined herein, have the same meaning as they do in the By-law.

3.2 In this Regulation:

- (a) **“Authorized Representative”** means an individual who can offer immigration/citizenship advice and/or service for a fee or other consideration. An Authorized Representative includes a member In Good Standing with a Canadian provincial or territorial law society (including paralegals within their authorized scope of practice) or with the Chambre des notaires du Québec or an RCIC [*représentant autorisé*];
- (b) **“Client”** means a person or Entity whose interests the Licensee undertakes to represent for a fee or other consideration, or *Pro bono*, regarding a proceeding or application, or potential proceeding or application, under the *Immigration and Refugee Protection Act* (IRPA) or the *Citizenship Act* [*client*];
- (c) **“Contingency Billing”** means when payment or partial payment is due only upon a successful decision by the government [*honoraires conditionnels*];
- (d) **“Designate”** means an individual who has been given authority, in writing, by the Client to act on their behalf in dealings with the Licensee. The Client shall specify what duties are being conferred to the Designate and the duration of the authority. A Designate shall not be compensated by the Client or the Licensee, for acting in the capacity as Designate [*représentant désigné*];
- (e) **“Disbursements”** means miscellaneous expenses incurred by a Licensee in the course of providing services to a Client, including government processing fees, and for which such Client may reimburse the Licensee and, for purposes of clarity, excludes fees for services rendered by a Licensee [*débours*].
- (f) **“Entity”** means a company, business, corporation, partnership, institution, or any other organization that has a separately identifiable existence and which is distinguished from individuals [*entité*];

- (g) **“Initial Consultation Agreement”** means a Client assessment and/or advice service agreement between a Licensee and their Client, or the Client’s Designate, which provides a written record of the purpose, fee, and date of said advice, and which is signed by both parties. A written Initial Consultation Agreement is only required when a consultation is given for a fee paid by the Client in advance [*contrat de consultation initiale*];
- (h) **“Invoice”** means an itemized bill for services that have been rendered by the Licensee to the Client [*facture*];
- (i) **“Joint Retainer Agreement”** means a Retainer Agreement where more than one Licensee is identified and/or where more than one Client is identified [*contrat de service professionnel conjoint*];
- (j) **“Licensee”** means an RCIC of the Council [*titulaire de permis*];
- (k) **“Pro bono”** means immigration or citizenship service or advice that is donated to or free for the Client [*bénévole*];
- (l) **“Professional Fees”** means the amount of money that the Licensee will charge the Client for the provision of the service [*honoraires professionnels*];
- (m) **“Retainer”** means the sum of money that is deposited with the Licensee at the outset of the relationship with the Client which may be replenished from time to time [*avance*];
- (n) **“Retainer Agreement”** means the contract between the Licensee and the Client that sets out the terms of the business arrangement between them [*contrat de service professionnel*].

4. EXPECTATIONS

- 4.1 A Licensee shall enter into an Initial Consultation Agreement with the Client before advice is given, that sets out the Agreement for such advice. A written Initial Consultation Agreement is required when a consultation is given for a fee or other consideration by the Client in advance. The Initial Consultation Agreement shall be written in either English or French and shall be dated and signed by the Client and the Licensee. Where the Client is not physically present to sign the Initial Consultation Agreement, a signature shall be obtained through a mutually agreed upon method.
- 4.2 A Licensee shall enter into a Retainer Agreement with the Client that describes the scope of services between the Client and the Licensee. Once a Retainer Agreement is signed, the Client may appoint a Designate in writing to act on their behalf when dealing with the Licensee.
- 4.3 In the event another Authorized Representative has signed the Retainer Agreement, the Licensee is exempted from section 4.2 of this Regulation.

- 4.4 A Retainer Agreement shall be completed for all services a Licensee undertakes for a fee or other consideration under IRPA, *the Citizenship Act* or in the case of Labour Market Impact Assessments or some Provincial Nominee Program (PNP) applications under the rules which apply to the said procedures.
- 4.5 A Licensee shall include in the Retainer Agreement a clause stating that in the event the Client is unable to contact the Licensee and has reason to believe the Licensee may be dead, incapacitated or otherwise unable to fulfil their duties, the Client should contact the Council.
- 4.6 Further to section 4.4 of this Regulation, a Retainer Agreement shall be completed for the provision of *Pro bono* services.
- 4.7 Further to section 4.2 of this Regulation, a Retainer Agreement is not required when a Licensee is a salaried employee of an Entity whose primary business is not the provision of immigration services and is employed to assist that Entity and its employees with immigration services.
- 4.8 If a client requests services other than immigration or citizenship services, the Licensee must notify the Client that the Retainer Agreement can only apply to immigration or citizenship services and that a separate agreement would be required.

5. GENERAL CONTENT

- 5.1 A Licensee shall provide the Client with a written Retainer Agreement, preferably prior to, but no later than ten (10) calendar days after beginning any work for the Client, that clearly states and fully discloses:
- (a) the Client;
 - (b) the name, address and telephone number of the Licensee and of the Client;
 - (c) the immigration and/or citizenship category and program under which the Client is seeking representation;
 - (d) the scope of services for which the Licensee is retained by the Client;
 - (e) the total of funds that will be held as a Retainer in the Licensee's Client Account and the circumstances of when the Retainer will be replenished;
 - (f) the fees payable;
 - (g) the types of Disbursements to be charged;
 - (h) the payment terms and conditions:
 - i. by the hour; or

- ii. by the day; or
 - iii. flat fee billing with payment by milestones; or
 - iv. flat fee billing with payment with predetermined date;
- (i) the schedule of payments, if any;
 - (j) the frequency in which Invoices of services will be provided to the Client;
 - (k) that the Licensee is a Licensee of the Council; and
 - (l) sufficient detail as to how to contact the Council.
- 5.2 In the event additional services are required, a separate Retainer Agreement shall be completed pursuant to section 8 of this Regulation.
- 5.3 A Retainer Agreement shall include express authorization from the Client for the Licensee to act on their behalf to the extent of the specific functions which the Licensee was retained to perform.
- 5.4 A Retainer Agreement shall be written in either English or French, dated and signed by the Client and the Licensee personally and not by a Designate, preferably before the Licensee commences representation of the Client, unless authorized by a separate agreement with the payor of the fees who is not the Client. Where the Client is not physically present to sign the Retainer Agreement, a signature will be obtained through a mutually agreed upon method.
- 5.5 A Licensee shall provide a copy of the signed Retainer Agreement to the Client and retain a copy of the signed Retainer Agreement. The Licensee shall provide the Client with a confirmation, either by way of e-mail, fax or registered letter that includes a copy of the signed Retainer Agreement and indicates that it was sent by the Licensee. The Licensee shall retain a copy of this confirmation with the records relating to the Client.

6. JOINT RETAINER AGREEMENTS

- 6.1 Before agreeing to represent more than one Client in a matter, a Licensee shall advise the Clients that:
- (a) Clients being simultaneously represented by a Licensee on a common matter should agree that the Licensee may share information among all Clients as required; and
 - (b) if a conflict between Clients develops and cannot be resolved, the Licensee cannot continue to represent all Clients, and may have to withdraw as the Client's representative for one or all Clients.

- 6.2 If a Licensee has a continuing relationship with one Client for whom they act regularly before agreeing to act for that Client and another Client in a matter, the Licensee shall advise the other Client of the continuing relationship.
- 6.3 Although all parties concerned may consent, a Licensee shall avoid acting for more than one Client if it is likely that an issue contentious between them will arise or their interests, rights, or obligations will diverge as the matter progresses.
- 6.4 Where there is more than one Client, both Clients must date and sign the Joint Retainer Agreement.
- 6.5 If there is more than one Licensee representing at the same firm, and/or providing immigration/citizenship services to the Client, the Retainer Agreement shall identify each Licensee of that Firm and the functions each Licensee will perform.
- 6.6 The Licensee signing the Retainer Agreement on behalf of the Firm is responsible for all elements of the Agreement, including activities of subsequent Licensees working on the file. All Licensees engaged to work on a file are jointly and severally responsible for the quality of work and service delivered to the Client.
- 6.7 Further to section 6.5 of this Regulation, all Licensees working on the file are subject to the Council's By-law, Code of Professional Conduct, Regulations and policies.
- 6.8 Where there is more than one Licensee providing immigration/citizenship service or advice to a Client and those Licensees work at separate Firms, they may enter into a Joint Retainer Agreement with the client but must clearly identify the functions of each Licensee. Both Licensees must sign and date the agreement. Both Licensees are jointly and severally responsible for the quality of work and service delivered to the Client.
- 6.9 Where there is more than one Licensee r providing immigration/citizenship service or advice to a Client in a jurisdiction where additional registration qualifications are required, each Licensee shall enter into and sign a separate Retainer Agreement.

7. CHANGES TO THE ORIGINAL RETAINER AGREEMENT

- 7.1 Any changes or edits made to the Retainer Agreement after the document is originally signed shall be mutually agreed upon by the Client and the Licensee in writing.
- 7.2 All changes or edits should be initialled by the Licensee and the Client.

8. ADDITIONAL SERVICES

- 8.1 A Client requesting additional Canadian immigration/citizenship-related services shall be notified:

- (a) that a separate Retainer Agreement is required, or
- (b) where applicable, a signed addendum to the original Agreement is required.

9. **FEES FOR SERVICES**

9.1 A Licensee shall clearly identify in a Retainer Agreement:

- (a) The method by which the Professional fees for the services are to be determined, that is payment by the hour or by the day or flat fee billing with payment by milestones or flat fee billing with payment by milestones with predetermined dates;
- (b) The estimated total amount of fees that will be collected and held as a Retainer in the Client Account;
- (c) The Professional fees payable by the Client;
- (d) If billing by milestones, then a chronological list of milestones with related Professional fees and Disbursements;
- (e) A payment schedule outlining when fees are due by the Client;
- (f) The currency in which the fee is to be paid by the Client;
- (g) Applicable taxes to be paid by the Client (if no tax is to be paid, indicate “Not Applicable”); and
- (h) Any administrative fee a Licensee may charge for processing a Client initiated discharge of representation and/or early termination of the Retainer Agreement.

9.2 All fees shall be fair and reasonable.

9.3 Contingency billing is not permitted as a billing method for the Client.

9.4 Money held on behalf of a Client shall be deposited in the Licensee’s Client Account, and maintained and withdrawn in accordance with the Client Account Regulation.

10. **INVOICES**

10.1 An Invoice shall include:

- (a) the name of the Client;
- (b) a list of the services rendered;

- (c) the date(s) the services were rendered; and
- (d) the total Professional Fees payable to the Licensee for those rendered services.

11. OBLIGATIONS OF THE CLIENT

- 11.1 A Licensee shall notify the Client in the Retainer Agreement that they:
- (a) are responsible to provide to the Licensee all required documentation to process the file;
 - (b) shall be aware of their responsibility for providing up-to-date and reliable contact information in a timely manner;
 - (c) shall be aware of their responsibility for providing accurate information and that any inaccuracies may negatively impact the outcome of the application; and
 - (d) shall be aware that the Licensee's obligations under the Retainer Agreement are null and void if they knowingly provide any inaccurate, misleading or false material information. The Client's financial obligations remain.

12. COLLECTION OF CLIENT MONEY OR PROPERTY

- 12.1 A Licensee shall not collect any money or property of a Client to be held on behalf of a Client to cover the Licensee's fees or Disbursements without the express or implied consent of the Client.

13. DISBURSEMENTS

- 13.1 A Licensee shall identify in the Retainer Agreement the Disbursements that may be incurred in the course of the provision of services under the Retainer Agreement. Where possible, the cost or estimated cost of the Disbursement to the Client is also to be clearly identified.
- 13.2 A Licensee shall identify in the Retainer Agreement how the Client will be billed for Disbursements.

14. ISSUES OF DISPUTE

- 14.1 A Licensee shall include in the Retainer Agreement:
- (a) a statement about the relationship between the Licensee and the Council;
 - (b) the process the Client should follow in the event there is a dispute and that the Licensee will address the concerns of the Client within a specified time period;

- (c) contact information of the Council should the Client wish to file a complaint if a dispute remains unresolved; and
- (d) the Council's website address and the specific section details where a Client may obtain information about the Council's complaint process and procedures.

15. DISCHARGE OR WITHDRAWAL OF REPRESENTATION

- 15.1 A Licensee shall identify in the Retainer Agreement the right of the Client to discharge representation by a Licensee at any time according to applicable laws governing contractual arrangement in the jurisdiction where the Licensee resides and where the Licensee is licensed to provide services under IRPA or the *Citizenship Act*. A Licensee shall specify what happens in the event the Client discharges representation.
- 15.2 A Licensee shall identify in the Retainer Agreement their right to withdraw as the Client's representative if the Client fails to honour the Retainer Agreement. A Licensee shall specify what happens in the event the Licensee withdraws from representation.
- 15.3 In discharging or withdrawing representation, a Licensee shall ensure there is no prejudice to the Client.
- 15.4 A Licensee shall identify what costs will be incurred by the Client in the event the Client discharges representation.
- 15.5 A Licensee shall withdraw as the Client's representative, if:
- (a) discharged by the Client;
 - (b) instructed by the Client to act in a manner that is illegal under the Canadian laws or in contravention of the Code of Professional Conduct;
 - (c) the Licensee's continued involvement will place the Licensee in a conflict of interest; or
 - (d) the Licensee is not competent to handle the matter.
- 15.6 A Licensee may, but is not required to, withdraw as the Client's representative if there has been a serious loss of confidence between the Licensee and Client, such as where:
- (a) the Client has deceived the Licensee;
 - (b) the Client has failed to give adequate instructions to the Licensee; or
 - (c) the Client has failed to accept and act upon the Licensee's advice on a significant point.

- 15.7 In situations not covered by Articles 11.1 and 11.2 of the RCIC Code of Professional Ethics (Code of Professional Conduct), a Licensee may withdraw as the Client's representative only if the withdrawal:
- (a) will not prejudice the Client's interests; and
 - (b) is not done for an improper purpose.
- 15.8 Where, after reasonable notice, the Client fails to pay the Licensee's fees or Disbursements as agreed, a Licensee may withdraw as the Client's representative unless serious prejudice to the Client would result.
- 15.9 Upon discharge or withdrawal, a Licensee shall:
- (a) deliver to the Client all documents, files and property which belong to the Client;
 - (b) give the Client all the information that may be required in connection with the matter;
 - (c) provide an Invoice for all services that have been rendered or account for the time that has been spent on the Client's file in the event of hourly or daily billing;
 - (d) provide an itemized account for all funds of the Client held or previously dealt with, and refund any funds not earned during the duration of the Retainer Agreement and for which an Invoice was not generated;
 - (e) promptly render an account for any outstanding Professional fees and Disbursements;
 - (f) co-operate with the successor so as to minimize expense and avoid prejudice to the Client; and
 - (g) make best efforts to notify in writing, within ten (10) calendar days, any government agency where the Licensee's name appears as representative for the Client that the Licensee has withdrawn.

16. CONFIDENTIALITY

- 16.1 A Licensee shall include a statement in the Retainer Agreement that outlines how the Client's personal information and documentation will be protected.
- 16.2 A Licensee shall notify the Client in the Retainer Agreement of the preferred method of correspondence.
- 16.3 A Licensee shall notify the Client in the Retainer Agreement that information is collected and protected according to the Code of Professional Conduct.

17. REFUND POLICY

- 17.1 A Licensee shall identify in the Retainer Agreement how unused and/or unearned fees will be refunded to the Client. Such fees shall be refunded to the Client in accordance with Client File Management Regulation and Client Account Regulation.
- 17.2 A Licensee shall notify the Client that fees are not refundable in the event of an application refusal.

18. PENALTY FOR BREACH OF REGULATION

- 18.1 A Licensee who breaches any provision of this Regulation will be subject to the following penalties:
- (a) For a first offence, a \$250 fine and a written warning with direction to correct deficiency within thirty (30) calendar days of a Registrar's decision or order.
 - (b) For a second or similar offence, \$1000 fine.
 - (c) For a subsequent offence, a \$1000 fine per incident.
 - (d) Failure to correct deficiencies within thirty (30) calendar days of a Registrar's decision or order, or pay fines is subject to suspension and ultimately revocation.