

Brown

Family Law

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RETAINER AGREEMENT AND PRACTICE MEMORANDUM

1. I confirm that you have retained me, Ian J. H. Brown, to represent you in a family law matter. Not all of the contents of this document will apply to your situation but I ask that you read it in detail so that you are aware of potential issues facing family law clients.

Scope and Style of Practice

2. How your matter is resolved and the level of conflict involved will have a tremendous impact on the length and cost of my involvement. I work very hard to avoid conflict and keep clients focused on achievable and realistic results. Wherever possible we will look for opportunities for creative solutions that have value for both parties.
3. I will provide you with direction and advice based on my experience as a family law lawyer. Lawyers act only on instructions from clients. I will not make decisions for you or act without your approval or consent. However, when I seek instructions from you, I will provide you with a range of options from which to choose.
4. I pride myself on a reputation for being reasonable and minimizing conflict. I believe that reputation will be of benefit to you and I do not change my style of practice to suit a client's preference. My practice is resolution focused.
5. I no longer argue cases in court and I do become involved in contentious parenting cases. After 18 years of litigating and attending court on a weekly basis I decided in 2019 to take a break from court work. If your matter needs judicial intervention, I will assist you in finding a lawyer experienced with the court in that jurisdiction. I continue to file applications for uncontested divorces.

Working with a Sole Practitioner

6. I am a sole practitioner. That means I am in business by myself. In Guelph you can choose from sole practitioners to law firms with dozens of lawyers. I have

worked in large firms, in partnership, and as a sole practitioner. I prefer to work as a sole practitioner and have done so since 2007.

7. As a sole practitioner I have complete control over my practice. Sole practitioners often have lower overhead (expenses) than larger firms. I have a small office with one part-time assistant. I do not have a receptionist or additional support staff. By keeping my expenses down, I can limit the number of clients I act for which, in turn, allows me to better serve the clients I choose to represent.
8. You can establish a working relationship with me and my assistant and not have to worry about a new lawyer being assigned to the case or multiple staff working on your file. The majority of my clients are referred to me by other lawyers in Guelph who do not practice family law; by larger firms that have a conflict in acting for one spouse against the other; and, by former clients.
9. There are three significant disadvantages in working with a sole practitioner:
 - a. Communication with me can be inconsistent. I usually have 40 to 50 active files at any given time. That means 40 or 50 other people just like you. There will be times when you will hear back from me immediately and other times when I will not respond to an email for a few days (This has improved significantly since I stopped taking court cases). If that happens, please send a brief follow-up email and please be patient.
 - b. I take regular vacations. When I am away nothing will happen on your file. I am typically on vacation during the school March Break, the Christmas school holiday and for two to three weeks during the summer. Sometimes my office will be completely closed.
 - c. I am careful to limit the number of high conflict files I become involved in. If your matter becomes too time consuming (to the detriment of my other clients) I may withdraw my services and refer you to another lawyer. This rarely happens but it is always a possibility given the unpredictable nature of family law.

Financial Retainer

10. A financial retainer (ie: a deposit) is required before I consider myself to be retained and begin working on your file.
11. The minimum retainer requirement is \$5,000.00 unless I specifically advise otherwise. The initial retainer is neither a fixed fee nor an estimate of the total cost of your legal expenses.
12. Your retainer money is deposited into my trust account where it stays until work is performed on your file. When I do work for you, I send you an interim account and pay that account from your retainer.
13. The natural inclination of most lawyers is to delay billing a client until something significant happens such as a settlement meeting or the signing of an agreement. The difficulty with that approach is twofold: no one likes to receive a large bill, and clients may be unaware of costs that have accumulated. I do not wait for certain milestones or results before sending an account. I review my accounts

- every week and send bills to each client where I have more than \$500.00 worth of time invested (Most lawyers bill clients monthly and some only send bills out at the conclusion of a matter).
14. I will send you interim accounts on a regular basis so that you are fully aware of the costs being incurred in your matter. I do this to help guide you in your decision making and to ensure that you know the status of your retainer. I find clients are less likely to be distracted by minor issues when they receive regular accounts and are more likely focus on the larger issues which in turn helps limits expenses.
 15. When I issue an interim account to you I will pay it immediately from your retainer money held in my trust account.
 16. Interim accounts are payable when issued. That is why I send out interim accounts.
 17. If your initial retainer is exhausted, meaning we have gone past the initial \$5,000.00, and I send you a further account, I expect you to pay that account immediately upon receipt by e-transfer.
 18. I will tell you how much money I need to replenish your retainer before continuing with the next step in your matter.
 19. I will stop working on your file if your retainer is exhausted. It is your job to ensure that I have enough money in trust to continue working on your file.
 20. When your file is completed, if your retainer exceeds my fees and disbursements then the balance will be returned to you at the time of the final billing.
 21. When settlement funds are received by my office on your behalf those monies will be applied to any outstanding account or held in trust to cover the cost of work that has been performed but not yet billed at my discretion. If your matter has not been resolved on a final basis, I will discuss with you the desirability of maintaining an adequate retainer to see your matter through to a conclusion.
 22. Unfortunately, there is no way of predicting the cost of resolving a family law matter. There are many variables to consider not the least of which is the response from the other party. I can provide you with estimates for specific types of legal work such as preparing a separation agreement, but there are no guarantees.

Fees

23. I charge for my services based of the amount of time I spend on your matter. I also charge for out-of-pocket disbursements such as courier charges, office supplies and bank fees.
24. My hourly rate is \$400.00. My assistant's hourly rate is \$100.00. I charge \$0.25 per page for photocopying and printing. HST is payable on all of our charges.

25. My fees are calculated on the basis of the amount of time spent on your file. I will provide you with a detailed breakdown of the time spent on your file with each account.
26. All of the time spent on your file is recorded in units representing one-tenth of an hour (six minutes). That includes time spent on email exchanges with you, attending meetings, drafting documents (which includes proofreading, revisions and corrections), receiving and considering documents, including simple letters and, of course, preparation, negotiation and attendances at meetings etc. I generally do not charge for brief communications of an administrative nature such as confirming appointment times.
27. I occasionally add an additional fee to my final account to reflect the results achieved, amounts involved, urgency, complexity or any other relevant factors.
28. While I do my best to ensure errors are found in draft documents before I send them to you, occasionally I make mistakes. I do not charge for typographical corrections in documents.
29. You may have reason to hope that your spouse will reimburse you for your legal expenses. This rarely happens and is completely outside of this agreement. I will insist on looking directly to you and not your spouse or anyone else for payment of my account.

Disbursements

30. Disbursements are amounts that I am required to pay to others on your behalf. I require my clients to pay these disbursements as I incur them.
31. Disbursements include such things as bank charges, printing and office supplies that we use to organize your file like file folders, tabs and accordion files. Those will appear on your account under one general heading, whereas things like filing fees paid to court, courier expenses, and process-serving fees are billed separately.
32. If I retain an expert on your behalf, I will pay the expert immediately upon the submission of an account. Such experts (where necessary) include actuaries, appraisers, and business valuers, etc. The use of experts will always be discussed with you prior to their employment so that you can decide whether it will be financially possible for you.

Disclosure

33. You must disclose to me all relevant documents and all facts, even if they hurt you and help the other party. I will tell you what must then be disclosed to the other party. There is very little that can be withheld. Where the facts change after I make a disclosure, I have a duty to disclose the changed facts, even if this hurts your case.
34. It is both embarrassing and detrimental to your position to have relevant information about you revealed to me by your spouse's lawyer.

35. It is in your best interest to completely disclose to me your entire financial position and all other matters relevant to the issue. There are several reasons for this:
- a. I cannot properly represent you unless I am fully and frankly informed;
 - b. The law requires early and full disclosure of all relevant information in family law matters and courts have been highly critical in cases where this has not occurred;
 - c. It is far less expensive for you if this information is presented to me completely so that extensive work is not required on my part to revise your financial statement or your pleadings; and,
 - d. Full disclosure involves completion of a financial statement or net family property statement which I will prepare for you, production of recent bank records, complete Income Tax Returns and Notices of Assessment (for the past three years), RRSP statements, mortgage statements and anything else that is relevant to determine your net family property.
36. Your financial disclosure must be complete and accurate. You will be required to swear an oath as to the truth of the contents. Errors and omissions on this statement can only hurt your position.

Communicating with my office

37. Whenever practical, I will send you copies of letters and documents that we prepare for your approval in advance, before I send them. I will send you copies of all letters and documents that I receive. I try to obtain your approval before sending letters but that is not always possible in which case I will send you a copy of the letter after it has been sent.
38. Email is the most convenient and effective means of communicating with my office. I strongly encourage you to use email to communicate with my office.
39. I will forward correspondence to you via email when it is received. Occasionally when a letter is received, it will be sent to you before I have seen it. When you receive an email with a letter, please do not call or email immediately upon receiving the letter asking for my thoughts or response.
40. Email is a significant improvement over mailing correspondence and can save time and money. Having said that, email can be overused: please do not email me to ask if I have “heard anything”. Please do not call the office to tell me you have just sent me an email or received an email from us.
41. When we have a number of issues to discuss, it is often best to meet in person or arrange a telephone call or have a Zoom meeting. When you contact my office by telephone I will rarely be available to speak with you immediately. Arranging a mutually convenient time for us to speak by telephone is helpful because it allows me to prepare for your call by reviewing your file.
42. If no one answers when you call, leave a brief message. Do not hang up and call back.

43. When you leave a voicemail, always give your telephone number. Leave your telephone number both at the beginning and at the end of your message and please speak slowly. If possible, please let me know when you are available for a meeting or telephone conference.
44. Do not come to the office without an appointment and expect to meet with me. 'Drop-ins' disrupt my work day and are rarely productive. They usually happen when a client is upset and it is always better to speak with me when you can think clearly.
45. It is imperative that you provide my office with accurate and detailed contact information and to keep your contact information current.
46. I maintain a secure drop-box in the foyer of my building for use when the building is open but we are unavailable. It is labeled and looks like a small brown mailbox. If you leave a document in the drop-box please send an email or voicemail to let me know. Outside of business hours, documents can be put through the mail slot in the front door of the building.

Unpaid Accounts

47. My accounts are payable upon receipt by e-transfer.
48. I will not work on your matter until your account is paid.
49. If an account is unpaid for more than thirty days, I may require that you find a new lawyer.

Other Important Matters

50. You have likely consulted me with a very specific request such as negotiating a separation agreement or obtaining a divorce. There are other important issues that you should consider. These include such things as:
 - a. The importance of limitation periods for you to pursue property rights under section 7(3) of the Family Law Act¹;
 - b. The desirability of a new Will (I do not prepare wills but can refer you to another lawyer if requested);
 - c. Severing any joint tenancies with your spouse so that your assets are held in common rather than jointly, with right of survivorship;
 - d. Giving notice to the issuers of joint credit cards or banks who have extended joint credit that you will no longer be responsible for debts incurred by your spouse;

¹ An application shall not be brought after the earliest of;

- (a) Two years after the date the marriage is terminated by divorce or judgment of nullity;
- (b) Six years after the date the spouses separated and there is no reasonable prospect that they will resume cohabitation;
- (c) Six months after the first spouse's death.

- e. NOT making an offer to purchase a new home until after you have a signed separation agreement in place or a final Court Order;
- f. Changes in your insurance beneficiaries; and,
- g. The potential for you or your spouse applying to Canada Pension Plan for a sharing of Canada Pension credits earned by either of you during marriage.

I may not raise these with you on the assumption that you are already familiar with these issues; if you are not you should let me know right away.

Confidentiality

- 51. All of the information you provide to my office is strictly confidential. None of this information is revealed outside my office except to the other party's lawyer during negotiations.
- 52. Guelph is a small city. I regularly see clients outside of work; at restaurants, stores, school concerts and graduations, etc. To protect the privacy of my clients I will not acknowledge you or speak with you in public unless first approached by you (Please don't think I am being rude).
- 53. This memorandum is confidential and is prepared for the sole use and convenience of clients of Ian J. H. Brown.

I confirm that I have explained to you that I am not acting on any litigation matters at this time. If your matter cannot be settled outside of court, I will not be your solicitor of record but will refer you to another family law lawyer.

I thank you for retaining my services and look forward to assisting you in this matter.

Receipt and acceptance of this agreement is acknowledged this _____ day of _____, 20____.

Signature: _____

Print Name: _____

Ian J. H. Brown: _____