

# Brown

## Family Law

Ian James Howard Brown

164 Norfolk Street  
Guelph, Ontario  
N1H 4J9

Telephone: 519 767-1111  
Fax: 519 767-5388  
[ian@brownfamilylaw.ca](mailto:ian@brownfamilylaw.ca)

## 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 limit my practice to family law matters within the jurisdiction of Guelph and Wellington County. I will attend settlement meetings outside of Guelph but will not participate in court proceedings outside of my home jurisdiction. Despite the existence of Provincial Court rules of procedure the Courts in Ontario tend to operate as individual fiefdoms with their own protocols and procedures. If your matter goes to court in another jurisdiction I will assist you in finding a lawyer experienced with the court in that jurisdiction.
6. Misconceptions about the role of lawyers in family law matters abound. The following quote is from an experienced Canadian Judge commenting on the role of the lawyer in a family law matter:

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*"Clients can take unreasonable positions, but lawyers must serve as their own gatekeepers of professional conduct rather than blindly following instructions. Lawyers are not free to act on whatever instructions they might receive from their clients. On the contrary, lawyers are obliged by their rules of professional conduct to refrain from acting on certain instructions. Put another way, distinct restrictions or disabilities accompany the rights and privileges afforded to lawyers. One such restriction or disability precludes them from carrying out the instructions of over-zealous clients. It is the lawyer who has conduct of a litigation file – not the client. The lawyer must maintain a certain independence from the client and must not let the client override his professional judgment. The lawyer is required of course to take instructions from the client, and owes a duty to do his best for the client; but an important part of the lawyer's job is to steer the client through the rocky territory of litigation. The lawyer is responsible for his word, both to the Court and to opposing counsel. He owes a duty to each. The lawyer must maintain his integrity and the honour of the profession at all times – even in the face of assertive clients and challenging courtroom environments. All of this is essential to his reputation and relationships with opposing counsel, which are of fundamental importance to the practice of law."*

### **Working with a Sole Practitioner**

7. 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.
8. 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 full-time and 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. I do not have minimum billing requirements, nor do I have to justify the amount of time I spend on a case to anyone except my client. 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

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practice family law; by larger firms that have a conflict in acting for one spouse against the other; and of course by former clients.

9. There are three significant disadvantages in working with a sole practitioner:
  - a. The first is that communication with me can be inconsistent. In order to maintain a viable practice and earn a living, I usually have 5 to 60 active files at any given time. That means 50 to 60 other clients just like you. There are times when I spend several days in court where all my attention is focused on one client and the other 40 to 50 clients cannot speak with me and will not hear from me. It is a juggling act and not one that I profess to have perfected. There will be times when you will hear back from me immediately and other times when I will not respond to a letter or an email for several days. When that happens you may need to relay a message through my assistant or simply be patient.
  - b. The second is that I take regular vacations during which nothing will happen on your file. I am typically on vacation during the school March Break, the Christmas school holiday and for two weeks during the summer. Sometimes my office will be completely closed.
  - c. The third is that 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: 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. I may occasionally ask for less or more depending upon the relative complexity of your case. The initial retainer is neither a fixed fee nor an estimate of the total cost of your legal expenses.
12. The retainer money is deposited into my trust account where it stays until work is performed on your file.
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 that no one likes to receive a large bill and

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- clients may be unaware of costs that have accumulated. I do not wait for certain milestones or results before sending a bill. 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 avoid any unpleasant surprises or unexpected costs and to ensure that you know the status of your retainer.
  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. When I send you an interim account I will tell you how much money I need to replenish your retainer before continuing with the next step in your matter.
  17. 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.
  18. 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.
  19. 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.
  20. 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 or a day of trial, but there are no guarantees.
  21. No one likes receiving a large bill. By sending bills to you on a regular basis we can both avoid unpleasant surprises. It is important that you know what my involvement is costing you. I find clients are less likely to be distracted by minor issues when they receive regular accounts. Regular interim billing and maintaining a retainer assists clients in focusing on the larger issues which in turn helps limit expenses.

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### Fees

22. 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 court fees (See below).
23. My hourly rate is \$375.00. My assistant's hourly rate is \$100.00. I charge \$0.25 per page for photocopying and printing.
24. 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 bill.
25. 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 or court, etc. I generally do not charge for brief communications of an administrative nature such as confirming appointment times.
26. I occasionally add an additional fee to my final account to reflect the results achieved, amounts involved, urgency, complexity or any other relevant factors.
27. While we do our best to ensure errors are found in draft documents before we send them to you, occasionally we make mistakes. We do not charge for typographical corrections in documents.
28. You may have reason to hope that your spouse will reimburse you for your legal expenses as a result of a settlement agreement or a court order. 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.
29. In particularly high conflict matters I may increase my hourly rate upon written notice to you.
30. As you may imagine, the work of a family lawyer can be at times, grim. This is particularly true when separated parents battle over the care of children during Christmas. If you require my services during the month of December to negotiate or otherwise address the scheduling of time with children over the Christmas holidays I will be billing you at double my regular hourly rate. I encourage clients with children to make Christmas arrangements well in advance of the holidays.

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### Disbursements

31. 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.
32. Disbursements include such things as filing fees paid to court, courier expenses, and process-serving fees.
33. If I retain an expert on your behalf I expect him or her to be paid immediately upon the submission of an account. Such experts (where necessary) include accountants, appraisers, business valuers, doctors, tax experts, actuaries, 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.
34. Disbursements include such things as office supplies that we use to organize your file like file folders and accordion files. Those will show as “photocopying expenses” on your bill (My accounting software does not allow for separate entries for these disbursements whereas things like court fees are listed separately).

### Disclosure

35. 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.
36. It is both embarrassing and detrimental to your position to have relevant information about you revealed to me by your spouse’s lawyer.
37. 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 in a court action or in the negotiation of a separation agreement 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;

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- 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 which I will provide to 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.
38. Your financial statement must be complete and accurate. You must swear an oath as to the truth of the contents. Errors and omissions on this statement can only hurt your position in negotiating and litigation.

### **Communicating with my office**

39. We will send you copies of all letters and documents that we prepare for your approval in advance and we will send you copies of all letters and documents that we receive. We do not send letters on your behalf without your approval.
40. My assistant Heather will know the status of your file and can answer most of your questions. She should be your first point of contact at my office.
41. Email is the most convenient and effective means of communicating with my office. If you have access to a computer or smart phone, I strongly encourage you to use email to communicate with my office. If you do not have a computer or smart phone, now is the time get one. Documents sent to my office by fax are received electronically and can be emailed to you shortly after being received. You will need to check your email every day.
42. My assistant will forward correspondence to you via email when it is received. Oftentimes when we receive a letter, it will be sent to you before I have seen it. When you receive an email from my assistant with a letter, do not call or email immediately upon receiving the letter asking for my thoughts or response.
43. 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”. Do not call the office to tell us you have just sent us an email or received an email from us.
44. When we have a number of issues to discuss, it is often best to meet in person or arrange a telephone meeting. When you contact my office by telephone I will rarely be available to speak with you immediately. Arranging a mutually

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- convenient time for us to speak by telephone is helpful because it allows me to prepare for your call by reviewing your file.
45. When you call and no one answers, leave a brief voicemail. Do not hang up and call back.
  46. 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 us know when you are available for a meeting or telephone conference. Please note that our voicemail box is a general one and my assistant listens to the messages and then relays important messages to me.
  47. 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.
  48. It is imperative that you provide my office with accurate and detailed contact information and to keep your contact information current.
  49. I maintain a secure drop-box in the lobby 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 us an email or voicemail to let us know.

### **Trial Retainer**

50. Trials are rare but expensive. If your matter is before the court and a trial management conference is scheduled, I will require you to immediately bring your account into good standing and to provide my office with an additional twenty thousand dollars (\$20,000.00) as a partial trial retainer and an additional five thousand dollars (\$5,000.00) for each day of trial.
51. Failure to provide my office with the partial trial retainer within ten (10) days of the matter being scheduled for a trial management conference will result in my immediate removal as your solicitor of record without your further consent.

### **Unpaid Accounts**

52. My accounts are payable when submitted. Interest is charged on unpaid accounts in the amount of 5% compounded annually.



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53. If an account is unpaid for more than thirty days I will require that you find a new lawyer.
54. Accounts that remain outstanding for more than 90 days will be sent to collections. I may take other steps to enforce payment including claiming a solicitor's lien against the contents of your file, having my account assessed and obtaining a Judgment against property owned by you or I may garnish your wages.

### Other Important Matters

55. 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 Act<sup>1</sup>;
  - 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;
  - 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.

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<sup>1</sup> 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.

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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

56. All of the information you provide to my office is strictly confidential. None of this information is revealed outside my office except in those cases when I disclose information to the court during the course of your proceeding or to the other party's lawyer during negotiations.
57. Guelph is a small community. I regularly see clients outside of work at restaurants, stores, school open-houses, etc. To protect the privacy of my clients I will not acknowledge you or speak with you in public unless first approached by you. This is true of my assistant as well.
58. This memorandum is confidential and is prepared for the sole use and convenience of clients of Ian J. H. Brown.

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 \_\_\_\_\_