

RETAINER AGREEMENT REGULATION



iccrc
IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL
crcic
CONSEIL DE RÉGLEMENTATION DES
CONSULTANTS EN IMMIGRATION DU CANADA

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1. AUTHORITY

- 1.1 This Regulation is enacted pursuant to section 3.1 of the *By-law* of the Council.
- 1.2 In the event of any conflict between the English version and the French version of this Regulation, or between this Regulation and the Council's *By-law*, the English version of the *By-law* shall govern.

2. PURPOSE

- 2.1 The purpose of a Retainer Agreement is to set out the exact duties of the Member 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 provide 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), the Chambre des notaires du Québec or ICCRC.
 - b) **"Client"** means a person or Entity whose interests the Member 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* or the *Citizenship Act*.
 - c) **"Contingency billing"** means when payment or partial payment is due only upon a successful decision by the government.
 - d) **"Designate"** means an individual who has been given authority, in writing, by the Client to act on their behalf in dealings with the Member. 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 Member, for acting in the capacity as Designate.
 - e) **"Disbursements"** means expenses incurred by a Member in the course of providing services to a Client including government filing fees and for which such Client will reimburse the Member and, for purposes of clarity, excludes Professional fees for services rendered by a Member.

- f) **“Engagement letter”** means a Retainer Agreement.
- g) **“Entity”** means a company, business, corporation, partnership, institution, or any other organization that has a separately identifiable existence and which is distinguished from individuals.
- h) **“Initial Consultation Agreement”** means a Client assessment and/or advice service agreement between a Member and their Client which provides a written record of the purpose, fee, and date of said advice, and which is signed by both parties.
- i) **“Invoice”** means an itemized bill for services that have been rendered by the Member to the Client.
- j) **“Joint Retainer Agreement”** means a Retainer Agreement where more than one Member is identified and/or where more than one Client is identified.
- k) **“Pro bono”** means immigration/citizenship service or advice that is donated to or free for the Client.
- l) **“Retainer Agreement”** means the written contract between the Member and the Client that sets out the terms of the business arrangement between them, for the provision of immigration and/or citizenship services.
- m) **“Retainer”** means the sum of money that is deposited with the Member at the outset of the relationship with the Client which may be replenished from time to time.
- n) **“Professional fees”** means the amount of money that the Member will charge the Client for the provision of the service.

4. EXPECTATIONS

- 4.1 A Member 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 Member. 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 Member shall enter into a Retainer Agreement with the Client that describes the scope of services between the Client and the Member. Once a Retainer Agreement is signed, the Client may appoint a Designate in writing to act on their behalf when dealing with the Member.
- 4.3 In the event another Authorized Representative has signed the Retainer Agreement, the Member is exempted from section 4.2 of this Regulation.

- 4.4 A Retainer Agreement shall be completed for all services a Member undertakes for a fee or other consideration under the *Immigration and Refugee Protection Act*, the *Citizenship Act* or in the case of Labour Market Impact Assessments or some Provincial Nominee Program applications under the rules which apply to the said procedures.
- 4.5 A Member shall include in the Retainer Agreement a clause stating that in the event the Client is unable to contact the Member and has reason to believe the Member may be dead, incapacitated or otherwise unable to fulfill their duties, the Client should contact ICCRC.
- 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 Member 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 Member 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 Member 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 Member 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 Member is retained by the Client;
 - e) the total of funds that will be held as a Retainer in the Member'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 Member is a Member of the ICCRC; and
 - l) sufficient detail as to how to contact the ICCRC.
- 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 Member to act on their behalf to the extent of the specific functions which the Member 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 Member personally and not by a Designate, preferably before the Member 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 Member shall provide a copy of the signed Retainer Agreement to the Client and retain a copy of the signed Retainer Agreement. The Member 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 Member. The Member 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 Member shall advise the Clients that:
- a) Clients being simultaneously represented by a Member on a common matter should agree that the Member may share information among all Clients as required; and
 - b) if a conflict between Clients develops and cannot be resolved, the Member 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 Member has a continuing relationship with one Client for whom he or she acts regularly before agreeing to act for that Client and another Client in a matter, the Member shall advise the other Client of the continuing relationship.
- 6.3 Although all parties concerned may consent, a Member 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 Member representing at the same firm, and/or providing immigration/citizenship services to the Client, the Retainer Agreement shall identify each Member of that Firm and the functions each Member will perform.
- 6.6 The Member signing the Retainer Agreement on behalf of the Firm is responsible for all elements of the Agreement, including activities of subsequent Members working on the file. All Members 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 Members working on the file are subject to the Council's *By-law*, *Code of Professional Ethics*, and Regulations.
- 6.8 Where there is more than one Member providing immigration/citizenship service or advice to a Client and those Members work at separate Firms, they may enter into a joint retainer agreement with the client, but must clearly identify the functions of each member. Both members must sign and date the agreement. Both members are jointly and severally responsible for the quality of work and service delivered to the Client.
- 6.9 Where there is more than one Member providing immigration/citizenship service or advice to a Client in a jurisdiction where additional registration qualifications are required, each Member 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 Member in writing.
- 7.2 All changes or edits should be initialled by the Member 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 Member 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 Member 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 Member’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 Member for those rendered services.

11. OBLIGATIONS OF THE CLIENT

11.1 A Member shall notify the Client in the Retainer Agreement that they:

- a) are responsible to provide to the Member 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 Member's obligations under the Retainer Agreement are null and void if they knowingly provides any inaccurate, misleading or false material information. The Client's financial obligations remain.

12. COLLECTION OF CLIENT MONEY OR PROPERTY

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

13. DISBURSEMENTS

13.1 A Member 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 Member shall identify in the Retainer Agreement how the Client will be billed for Disbursements.

14. ISSUES OF DISPUTE

14.1 A Member shall include in the Retainer Agreement:

- a) a statement about the relationship between the Member and ICCRC;
- b) the process the Client should follow in the event there is a dispute and that the Member will address the concerns of the Client within a specified time period;

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

15. DISCHARGE OR WITHDRAWAL OF REPRESENTATION

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

- 15.7 In situations not covered by Articles 11.1 and 11.2 of the Code of Professional Ethics, a Member 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 Member's fees or disbursements as agreed, a Member may withdraw as the Client's representative unless serious prejudice to the Client would result.
- 15.9 Upon discharge or withdrawal, a Member 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 Retaine 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 Member's name appears as representative for the Client that the Member has withdrawn.

16. CONFIDENTIALITY

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

17. REFUND POLICY

- 17.1 A Member 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 Member 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 Member 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, \$1000.00 fine.
 - c) For a subsequent offence, a \$1000.00 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.