

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE MR.) THURSDAY THE 16TH DAY OF
JUSTICE TURNBULL) FEBRUARY, 2012

BETWEEN:

ALLEN WYNPERLE
PROFESSIONAL CORPORATION

Applicant

-and-

██████████ and ██████████
by their Litigation Guardian, ██████████
and ██████████ by his Litigation Guardian, ██████████

Respondents

ORDER

THIS APPLICATION, made jointly by all Parties for an Order approving the Proposed Contingency Fee Retainer Agreements as attached as Schedule "A" and Schedule "B" to this Order, was heard this day at 45 Main Street East, Hamilton, Ontario.

ON READING the materials as filed and hearing submissions by the Parties,

1. THIS COURT ORDERS THAT the Proposed Contingency Fee Retainer Agreements, as attached as Schedule "A" and Schedule "B" to this Order, are approved by this Court as required by section 5 (1) (a) of the *Contingency Fee Agreements Regulation*, O Reg 195/04 of the Solicitors Act, R.S.O. 1990, Ch. A. 15, as amended.



2. THIS COURT FURTHER ORDERS THAT there are no costs awarded to any party pursuant to this Application.

Tennant J.

ENTERED AT HAMILTON	
IN Book No.	274
as Document No.	408
on	Feb 16/12
by.	SS

Schedule "A"

**CONTINGENCY FEE
RETAINER AGREEMENT**

DATE:

SOLICITOR: Allen J. Wynperle, Professional Corporation
25 Main St W, Suite 400
Hamilton, Ontario, L8P 1H1
Tel: (905) 577 0300

CLIENT

[REDACTED]
c/o [REDACTED]
[REDACTED] Street
[REDACTED], Ontario, [REDACTED]
Tel: (905) [REDACTED]

RE: Motor Vehicle Accident: March 20, 2008

This agreement confirms the engagement of Allen J. Wynperle, Professional Corporation, Barristers & Solicitors, as your legal counsel. We will represent you in this matter and such additional matters as you may refer to us.

We appreciate the opportunity to be of service and feel that you should be informed of the basis upon which you will be charged for our services as well as our billing procedures. Please read this letter carefully, keeping in mind that it is for the use of all clients and thus may include some provisions which seem inapplicable to you. Please question us if anything is unclear.

If a settlement offer is received from the defendants, you will be provided with full particulars and an estimate of your net recovery after payment of accrued fees and disbursements. We will also provide you with our recommendation as to whether the offer is reasonable given all of the circumstances known to us at the time. The decision to accept or reject any offer, however, must be made by you (on behalf of the minor children) and we will not accept or reject any offer, or submit any offers, without your specific written instructions.

Billing

There are two main ways a lawyer can bill you:

Option 1 — by charging an **hourly** fee for work done;

Option 2 — by charging a **percentage** of the amount of money awarded in a settlement or court judgment; or, *alternatively*, by accepting court ordered costs as the fee.

You have asked us to charge you fees based on a percentage of the amount of money awarded to you in a settlement or court judgment, or by accepting court ordered costs as the fee, whichever is greater (option 2).

We have discussed option 1 and you understand that hourly rates may vary among solicitors and you are free to speak with other solicitors to compare rates should you choose to do so.

Hourly Rates:	A. Wynperle	\$
	A. Malcolm	\$
	S. Malcolm	\$
	Student at Law	\$

We agree to represent you (on behalf of the minor children) in this matter on a contingency basis. Our fees will be █% of any settlement amount, plus HST. Our fees, together with applicable taxes and any outstanding disbursements, will be deducted from any settlement amount received. Our fees will not amount to more than is recovered in damages or by way of settlement.

This fee will NOT be calculated on any amounts paid by the defendant(s) towards your legal costs, HST and disbursements (also known as costs). We will not receive whatever the Defendant pays towards your costs. This amount goes directly to you to offset what you pay our firms.

For example, if you received a \$50,000.00 settlement, plus legal costs of \$5,000, and HST of \$650.00, and we had agreed to a 25% contingency fee, our fee would be:

25% of \$50,000.00 = \$12,500.00
HST of 13% = \$650.00
Total Fees = \$13,150.00

If a settlement is not achieved in this matter, whether through trial or by negotiation or mediation, then we agree to waive our fees. However, you acknowledge the plaintiffs obligation to pay any outstanding disbursements that have been incurred.

If the settlement is to be subject to a Structure, you agree to permit our office to withhold funds from the settlement to cover costs and disbursements as incurred.

Costs

If a judge awards costs for the plaintiffs at trial, you on behalf of the plaintiffs are entitled to receive any costs contribution or award, on a partial indemnity scale or substantial indemnity scale.

If a judge awards costs against the plaintiffs at trial, you, on behalf of the plaintiffs may be responsible for paying those costs to the other party or parties, on a partial indemnity scale or substantial indemnity scale.

The plaintiffs are responsible for all out-of-pocket expenses advanced by us. These expenses include travel costs, long distance telephone charges, computer research terminal time and printing costs, photocopying, witness fees, secretarial and word processing overtime (when dictated by your needs), transcript costs, service of process charges, facsimile transmission charges and filing, recording and registration fees charged by governmental agencies. These are paid out of the funds held in the plaintiffs trust account with us.

As you are responsible for the payment of disbursements or taxes, where we pay the disbursements or taxes during the course of the matter, we are entitled to be reimbursed for those payments, subject to section 47 of the Legal Aid Services Act, 1998 (legal aid charge against recovery), as a first charge on any funds received as a result of a judgment or settlement of the matter.

Termination of the Agreement

This Agreement may be terminated at any time, by you, in writing. If the termination is mutually agreeable the plaintiffs are only responsible for paying any outstanding disbursements and those paid by us on their behalf.

If the termination is not mutually agreeable, the plaintiffs are responsible for both our hourly fees to that point plus taxes and disbursements as described in the paragraph above. Alternatively, if the plaintiffs obtain other legal counsel, we will accept their undertaking to protect our account and pay it when your case settles.

Collection of Necessary Information

In order to prosecute the plaintiff case we will have to obtain personal and private information concerning them. This could include medical records, financial records or other, similar, types of information.

We will also have to provide these documents to adjusters and/or lawyers for the defendant(s). Only relevant information will be provided to them. This information will only be used to advance the plaintiffs case towards eventual settlement and for other purpose.

Parties under a disability

As the Plaintiff is a party under disability, for the purposes of the Rules of Civil Procedure and you represent them as a litigation guardian, this contingency fee agreement either must be reviewed by a judge before the agreement is finalized or must be reviewed as part of the motion or application for approval of a settlement or a consent judgment under rule 7.08 of the Rules of Civil Procedure.

Further, the amount of the legal fees, costs, taxes and disbursements are subject to the approval of a judge when the judge reviews a settlement agreement or consent judgment under rule 7.08 of the Rules of Civil Procedure.

Lastly, any money payable to a person under disability under an order or settlement shall be paid into court unless a judge orders otherwise under rule 7.09 of the Rules of Civil Procedure

You've instructed us to get court approval for this retainer agreement and we will bring the necessary application

You understand that all of the usual protections and controls on retainers, between solicitor and client, as defined by the Law Society of Upper Canada, apply to contingency fee agreements.

You have the right to ask the Superior Court of Justice to review and approve of the solicitor's bill within 30 days of receipt of our bill as prescribed in the Solicitors Act.

Please remember that you have the right to discuss this Agreement with any other lawyer, and to receive their advice, before signing.

Referral Fee

You agree that [REDACTED], lawyer in the city of Hamilton, will received [REDACTED]% of legal fees as recouped with respect to this action.

Should no settlement funds be received, no referral fee will be paid. You understand that this does not affect the amount of legal fees paid by you.

AUTHORIZATION AND DIRECTION

We hereby authorize Allen J. Wynperle, Professional Corporation, to pay from our trust accounts any retainers or outstanding disbursement accounts. This may be required without prior notification.

We also authorize and direct that all funds claimed by our solicitor for legal fees, costs, taxes and disbursements shall be paid to the solicitor, in trust, from any judgment or settlement money.

DATED AT _____, Ontario this _____ day of _____, 20____,

WITNESS

[REDACTED] [REDACTED] by his
Litigation Guardian,
[REDACTED] [REDACTED]

WITNESS

Allen Wynperle, Allen
Wynperle Professional
Corporation

Schedule "B"

CONTINGENCY FEE RETAINER AGREEMENT

DATE:

SOLICITOR: Allen J. Wynperle, Professional Corporation
25 Main St W, Suite 400
Hamilton, Ontario, L8P 1H1
Tel: (905) 577 0300

CLIENT

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DATED AT _____, Ontario this _____ day of _____, 20____,

WITNESS

[REDACTED] by his
Litigation Guardian Betty
[REDACTED]

WITNESS

[REDACTED] by his Litigation
Guardian [REDACTED]

WITNESS

Allen Wynperle, Allen
Wynperle Professional
Corporation

WYNPERLE

and

██████████ et al

Applicant

Respondents

Application No. 11-30994

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**ACTION COMMENCED IN THE CITY OF
HAMILTON**

ORDER

**ALLEN J. WYNPERLE
PROFESSIONAL CORPORATION**
Barrister and Solicitor
25 Main Street West, Suite 400
Hamilton ON L8P 1H1

LSUC #38540M

Telephone: (905) 777-0300

Facsimile: (905) 777-1050

Applicant