

APPLICATION NO: <>

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

<>

Applicant

-and-

<>

Respondents

JOINT FACTUM

(Returnable <>)

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Applicant**

TO <>

Application No: <>

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

<>

Applicant

-and-

<>

Respondents

JOINT FACTUM OF ALL PARTIES

APPLICATION UNDER S. 5 (1) (a) OF THE *CONTINGENCY FEE AGREEMENT REGULATION*, O Reg 195/04 OF THE *SOLICITOR'S ACT*, R.S.O. 1990, CH.S15, AS AMENDED

PART I: OVERVIEW

1. The Applicant law firm has entered into a contingency fee agreement with the Respondents. The Applicant seeks to charge a fee based on a percentage of the claimed amounts recovered. This agreement requires court approval. This Application seeks approval of the contingency fee agreement entered into between the Respondents and the Applicant law firm.

2. The Applicant moves under Section 5 (1) (a) of the *Contingency Fee Agreement Regulation*, O Reg 195/04 of the *Solicitors Act* which reads:

Contingency fee agreement, person under disability

5. (1) A solicitor for a person under disability represented by a litigation guardian with whom the solicitor is entering into a contingency fee agreement shall,
 (a) apply to a judge for approval of the agreement before the agreement is finalized; or

(b) include the agreement 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. O. Reg. 195/04, s. 5 (1).

(emphasis added)

Contingency Fee Agreements, O Reg 195/04, Schedule B, Tab 2

3. The Applicant seeks approval of the fee arrangement as the Respondents are all persons with a disability for the purposes of the Rules of Civil Procedure as they are all minors.

PART II: FACTS

4. The Applicant law firm represents the Respondents, <>.
5. The motor vehicle accident took place on <>. <details of accident>.
Affidavit of <>, sworn <>, at para 2
6. <> has been retained to pursue a claim for <>.
Affidavit of <>, sworn <>, at para 3
7. A Contingency Fee Retainer Agreement has been drafted and is required by s. 5 to be approved by way of application. Attached as Schedule "C" to this Factum are the proposed Contingency Fee Retainer Agreements.
Affidavit of <>, sworn <>, at para 4
Proposed Contingency Fee Retainer Agreement for <>, Schedule "C", Tab 1
8. The contingency fee agreement will cover the cost of all steps in the litigation.
Affidavit of <>, sworn <>, at para 6
9. <> will continue to retain all experts which may include, but are not limited to, assessments of: the physical and emotional need of <>, assessment of care giving expense, past and future care and rehabilitation and dependency (loss of income) claims. <> agree to be responsible for the costs of these reports on behalf of the Plaintiffs.

Affidavit of <>, sworn <>, at para 7

10. <> is a lawyer practicing in the city of <> having being called to the Bar in <>.

Affidavit of <>, <>, at para 8

11. <> became a certified specialist in civil litigation in 2006.

Affidavit of <>, sworn <>, at para 9

12. <>'s practice as a lawyer is restricted to Plaintiff focused personal injury litigation.

Affidavit of <>, sworn <>, at para 10

13. <> has recent experience pursuing similar claims <>.

Affidavit of <>, sworn <>, at para 11

14. <> reviewed the contents of the contingency fee retainer agreement with each Respondent's Litigation Guardian and received their consent to proceed with the within application.

Affidavit of <>, sworn <>, at para12

15. <> has reviewed and consents to the Contingency Fee Retainer Agreement which is subject to this Application.

Affidavit of <>, sworn <>, at para14

PART III: ISSUES

16. Is the evidence filed on this Application sufficient to allow a court to approve a Contingency Fee Retainer Agreement pursuant to s. 5(1) (a) of the *Contingency Fee Agreement Regulation*, O Reg 195/04 of the *Solicitor's Act*?

PART IV: LAW AND SUBMISSIONS

17. S. 28.1 (1) of the *Solicitor's Act*, R.S.O. 1990, Ch. S. 15 provides that a solicitor may enter a contingency fee agreement.

Solicitors Act, R.S.O. 1990, Ch. S. 15, Schedule "B", Tab 1

18. On October 1, 2004, amendments to the *Solicitor's Act* came into force, to regulate contingency fee agreements. The amendments make an application to the court for approval of a contingency fee retainer agreement mandatory where there are persons under a disability affected. Section 5 (1) (a) of the *Contingency Fee Agreements*, O Reg 195/04 of the *Solicitor's Act* states:

Contingency fee agreement, person under disability

5. (1) A solicitor for a person under disability represented by a litigation guardian with whom the solicitor is entering into a contingency fee agreement shall,

(a) apply to a judge for approval of the agreement before the agreement is finalized; or

(b) include the agreement 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. O. Reg. 195/04, s. 5 (1).

(emphasis added)

Contingency Fee Agreements, O Reg 195/04, Schedule B, Tab 2

19. The Applicant and Respondents are jointly applying for approval of the contingency fee retainer agreement.

20. Each Respondent, by litigation guardian, has filed an Affidavit in support of the relief sought in the within application.

Affidavit of <>, sworn <>

Affidavit of <>sworn <>

21. The within application seeks approval of the entire agreement.

22. The percentage fee charged does not exceed the regulatory maximum.

23. In addition, approval of this agreement does not in any way interfere with the Respondents' legal right to have any account rendered under the contingency fee retainer agreement reviewed by the Court to ensure that it is ultimately fair and reasonable.

Affidavit of <>, sworn <>, at para13

24. All of the requirements set out by the *Contingency Fee Agreement Regulation*, O Reg 195/04 have been complied with in the proposed contingency fee retainer agreement.

Contingency Fee Agreements, O Reg 195/04, Schedule "B", Tab 2
Proposed Contingency Fee Retainer Agreements, Schedule "C" Tab 1

25. There are no reported decisions dealing with the approval of a contingency fee agreement pursuant to s. 5 (1) (a) of the *Contingency Fee Agreements*, O Reg 195/04 of the *Solicitor's Act* prior to the settlement of an action.

26. The only case which directly interprets s. 5 (1) is *J. Arthur Cogan Q.C.* This motion involved approval of a settlement for a party under a disability. The original retainer agreement provided for a fee based on the percentage of the recovery. This retainer agreement was subsequently amended to provide for a fee of 25%.

J. Arthur Cogan Q.C., 2010 ONSC 915, Schedule "A", Tab 1

27. The court ultimately approved the arrangement proposed by the Applicants.

J. Arthur Cogan Q.C., 2010 ONSC 915, Schedule "A", Tab 1

28. It is submitted, pursuant to s. 5 (1) (a), this application is required by legislation.

PART IV: ORDER SOUGHT

29. The Applicant and Respondents, jointly, request an Order pursuant to s. 5 (1) (a) of the *Contingency Fee Agreement*, O Reg 195/04 of the *Solicitor's Act* R.S.O., Ch. S. 15 approving the Contingency Fee Retainer Agreement entered into between the Respondent clients and the Applicant law firm.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

<DATE>

<>

SCHEDULE "A" – LIST OF AUTHORITIES

	<u>Tab</u>
J. Arthur Cogan Q.C., 2010 ONSC 915	1

SCHEDULE "B" – STATUTES AND REGULATIONS

	<u>Tab</u>
Solicitors Act, R.S.O. 1990, Ch. S. 15	1
Contingency Fee Agreements, O Reg 195/04	2

SCHEDULE "C"

Tab

Proposed Contingency Fee Retainer Agreement for <>

1