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IMMIGRATION CONSULTANTS OF
CANADA REGULATORY COUNCIL



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CONSEIL DE RÉGLEMENTATION DES
CONSULTANTS EN IMMIGRATION DU CANADA

**IMMIGRATION CONSULTANTS OF CANADA
REGULATORY COUNCIL**

RETAINER AGREEMENT REGULATION

April 2013



Retainer Agreement Regulation

Table of Contents

UPDATES TO SECTION	3
SECTION 1: PURPOSE	6
SECTION 2: DEFINITIONS.....	6
SECTION 3: INTERPRETATION	7
SECTION 4: EXPECTATIONS	7
SECTION 5: GENERAL CONTENT.....	8
SECTION 6: JOINT RETAINER AGREEMENTS.....	8
SECTION 7: CHANGES TO THE ORIGINAL RETAINER AGREEMENT	8
SECTION 8: ADDITIONAL SERVICES	9
SECTION 9: FEES FOR SERVICES	9
SECTION 10: OBLIGATIONS OF THE CLIENT	9
SECTION 11: DISBURSEMENTS.....	10
SECTION 12: ISSUES OF DISPUTE	10
SECTION 13: TERMINATION	10
SECTION 14: CONFIDENTIALITY.....	11
SECTION 15: REFUND POLICY.....	11

UPDATES TO SECTION

Listing by dates:

Date: 12 December 2012

Section 2 was amended to:

- add a definition for Authorized immigration representative (2.b);
 - include *pro bono* in the definition of Client (2.d);
 - add a definition of Entity (2.j);
 - add a definition of *Pro bono* (2.m);
 - remove third party from the definition of Retainer Agreement (2.n); and
 - remove the definition of Third party.
- b. “Authorized immigration representative” means an individual who can offer immigration advice and / or service for a fee. Authorized immigration representatives include Regulated Canadian Immigration Consultants of the Council, lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, and notaries who are in good standing of the Chambre des notaires du Québec.
- d. “Client” means a person whose interests the ~~ICCRC~~ Member undertakes to advance, 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*. In cases pertaining to Labour Market Opinions, some Provincial Nominee Program applications, or Arranged Employment Opinions, Client means the Entity *or person* whose interests the ~~ICCRC~~ Member undertakes to advance, for a fee or other consideration, *or Pro bono*, regarding a proceeding or application, or potential proceeding or application.
- j. “Entity” means a company, business, corporation, partnership, institution, or any other organization that has a legal and separately identifiable existence and which is distinguished from individuals.
- m. “*Pro bono*” means immigration service or advice that is donated to or free for the Client.
- n. “Retainer Agreement” means ~~the an Agreement contract between a the Member and his or her the Client, or his or her Designate, and / or a third party that spells-sets out the terms of the business arrangement between them. In other words, the Retainer Agreement is the contract between the Member and the Client, or his or her Designate.~~

Section 4.i was amended to remove engagement letter since the definition of engagement letter in Section 2.i includes retainer agreement:

~~Every A Member of the Council must provide enter into a Retainer Agreement with the Client, or his or her Designate, with a written Retainer Agreement or engagement letter that describes the scope of services mutually agreed upon by between the Client, or their his or her Designate, and the Member.~~

Section 4.ii was amended to include the correct reference to professionals who offer immigration advice and/or services for a fee:

In the event another ~~recognized-Authorized~~ immigration representative has signed the Retainer Agreement, the Member is exempted from section 4(i) of ~~thisese~~ Regulations.

Section 4.iv was amended to mandate the use of a Retainer Agreement when members are engaged in *pro bono* work:

Further to subsection (iii) a Retainer Agreement ~~is recommended~~ **must be completed** for the provision of *pro bono* services

Section 4.v was amended to clarify that the Initial Consultation Agreement must be written in English or French, as well as how Members should proceed if a Client is not physically present to sign the Initial Consultation Agreement:

~~Every A Member of the Council~~ must ~~provide~~ enter into an Initial Consultation Agreement with the Client, or his or her Designate, before ~~advice is given representation commences, with a written Initial Consultation Agreement~~ that ~~spells sets~~ out the Agreement for such advice. The Initial Consultation Agreement must be ~~written in either English or French and must be~~ dated and signed by the Client, or his or her Designate, and the Member. ~~Where the Client is not physically present to sign the Initial Consultation Agreement, a signature will be obtained through a mutually agreed upon method.~~

Section 5.i was restructured for ease of flow:

A Member representing a Client must ensure the Retainer Agreement **clearly identifies the:**

- a. ~~Clearly identifies the~~ Client;
- b. ~~includes the #~~Name, address and telephone number of the Member and of the Client;
- c. ~~Category under which the Client is seeking representation; and~~
- ~~c.d. Identifies the sScope of services mutually agreed upon by between the Member and the Client, or his or her designate, to be provided.~~
- d. ~~The category under which the Client is seeking representation.~~

Section 5.iv was amended to clarify that the Retainer Agreement must be written in either English or French:

A Retainer Agreement must be **written in either English or French**, dated and signed by the Client, or his or her Designate, and the Member 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.

Section 6 was re-titled Joint Retainer Agreements to clearly represent the content in this section. Section 6.i was amended to clarify that the functions each Member will perform must be identified in the Retainer Agreement:

If there is more than one Member representing the Client, [the Retainer Agreement must](#) identify the functions each Member will perform.

Section 10 was reformatted to present the information more concisely:

- i. [A Client, or his or her Designate:](#)
 - a. ~~A Client, or his or her designate, is~~ responsible to provide to the Member all required documentation to process the file;
 - b. ~~A Client, or his or her designate, m~~Must be aware of his or her responsibility for providing up-to-date and reliable contact information in a timely manner;
 - c. ~~A Client, or his or her designate, m~~Must be aware of his or her responsibility for providing accurate information and that any inaccuracies may negatively impact the outcome of the application; [and](#)
 - d. ~~A Client, or his or her designate, m~~Must be aware that the Member's obligations under the Retainer Agreement are null and void if he or she knowingly provides any inaccurate, misleading or false material information. The Client's financial obligations remain.

Section 13.ii was amended to direct Members to specify what happens in the event the Member terminates representation:

A Member must identify his or her right to terminate representation if the Client, or his or her Designate, fails to honour the Retainer Agreement. A Member must specify what happens in the event the [Member Client, or his or her designate](#) wishes to terminate representation.

Date: 15 April 2013

Section 2.g was amended to enhance the definition of a designate:

- g. "Designate" means an individual who has been given authority, in writing, by the Client to act on his or her behalf [in dealings with the Member. The client must 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.](#)

Section 1 PURPOSE

The purpose of a Retainer Agreement is to set out the exact duties of the Member and the Client, or his or her Designate, 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.

Section 2 DEFINITIONS

In this Regulation:

- a. “Administrative fee” means the fee Members may charge for processing the withdrawal or termination of Client representation.
- b. “Authorized immigration representative” means an individual who can provide immigration advice and / or service for a fee. Authorized immigration representatives include Regulated Canadian Immigration Consultants of the Council, lawyers and paralegals who are members in good standing of a Canadian provincial or territorial law society, and members who are in good standing of the Chambre des notaires du Québec.
- c. “By-law” means the by-law of the Council.
- d. “Client” means a person whose interests the Member undertakes to advance, 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*. In cases pertaining to Labour Market Opinions, some Provincial Nominee Program applications, or Arranged Employment Opinions, Client means the Entity or person whose interests the Member undertakes to advance, for a fee or other consideration, or *Pro bono*, regarding a proceeding or application, or potential proceeding or application.
- e. “Contingency billing” means when payment or partial payment is due only upon a successful decision by the government.
- f. “Council” means the Immigration Consultants of Canada Regulatory Council/Conseil de réglementation des consultants en immigration du Canada.
- g. “Designate” means an individual who has been given authority, in writing, by the Client to act on his or her behalf in dealings with the Member. The client must 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.
- h. “Disbursements” means miscellaneous expenses incurred by a Member in the course of providing services to a Client including government filing fees and for which such Client, or his or her Designate, will reimburse the Member and, for purposes of clarity, excludes fees for services rendered by a Member.

- i. “Engagement letter” means a Retainer Agreement.
- j. “Entity” means a company, business, corporation, partnership, institution, or any other organization that has a legal and separately identifiable existence and which is distinguished from individuals.
- k. “Initial Consultation Agreement” means a Client assessment and / or advice service agreement between a Member and his or her Client, or the Client’s Designate, which provides a written record of the purpose, fee, and date of said advice and which is signed by both parties. A written Initial Consultation Agreement is only required when a consultation is given for a fee.
- l. “Member” means any individual who is admitted as a member of the Council in accordance with the *By-law*. A Member is a Regulated Canadian Immigration Consultant (RCIC).
- m. “*Pro bono*” means immigration service or advice that is donated to or free for the Client.
- n. “Retainer Agreement” means the contract between the Member and the Client, or his or her Designate, that sets out the terms of the business arrangement between them.

Section 3 INTERPRETATION

If there should arise any conflict between this Regulation and any of the Council’s *By-law*, the Council’s *By-law* will prevail.

Section 4 EXPECTATIONS

- i. A Member must enter into a Retainer Agreement with the Client, or his or her Designate, that describes the scope of services between the Client, or his or her Designate, and the Member.
- ii. In the event another Authorized immigration representative has signed the Retainer Agreement, the Member is exempted from section 4(i) of this Regulation.
- iii. A Retainer Agreement must be completed for all services a Member undertakes for a fee or other consideration under the *Immigration and Refugee Protection Act* or in the case of Labour Market Opinions, Provincial Nominee Program applications, and Arranged Employment Opinions under the rules which apply to the said procedures.
- iv. Further to subsection (iii) a Retainer Agreement must be completed for the provision of *Pro bono* services.
- v. A Member must enter into an Initial Consultation Agreement with the Client, or his or her Designate, before advice is given, that sets out the Agreement for such advice. The Initial Consultation Agreement must be written in either English or French and must be dated and signed by the Client, or his or her Designate, and the Member. Where the Client is not physically present to sign the Initial Consultation Agreement, a signature will be obtained through a mutually agreed upon method.

Section 5 GENERAL CONTENT

- i. A Member representing a Client must ensure the Retainer Agreement clearly identifies the:
 - a. Client;
 - b. Name, address and telephone number of the Member and of the Client;
 - c. Category under which the Client is seeking representation; and
 - d. Scope of services between the Member and the Client, or his or her Designate.
- ii. In the event additional services are required, a separate Retainer Agreement must be completed pursuant to Section 8.
- iii. A Retainer Agreement must include express authorization from the Client for the Member to act on his or her behalf to the extent of the specific functions which the Member was retained to perform.
- iv. A Retainer Agreement must be written in either English or French, dated and signed by the Client, or his or her Designate, and the Member 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.
- v. A Member must provide a copy of the Retainer Agreement to the Client, or his or her Designate, and retain a copy of the Retainer Agreement.

Section 6 JOINT RETAINER AGREEMENTS

- i. If there is more than one Member representing the Client, the Retainer Agreement must identify the functions each Member will perform.
- ii. The Member signing the Retainer Agreement 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.
- iii. Further to subsection (ii), all Members working on the file are subject to the Council's *By-law, Code of Professional Ethics*, and Regulations.

Section 7 CHANGES TO THE ORIGINAL RETAINER AGREEMENT

- i. Any changes or edits made to the Retainer Agreement after the document is originally signed must be mutually agreed upon in writing.

- ii. All changes or edits should be initialled by the Member and the Client, or his or her Designate.

Section 8 ADDITIONAL SERVICES

- i. A Client, or his or her Designate, requesting additional services must be notified:
 - a. That a separate Retainer Agreement is required, or
 - b. Where applicable, a signed addendum to the original Agreement is required.

Section 9 FEES FOR SERVICES

- i. A Member must clearly identify:
 - a. The method by which the fees for the services are to be determined, that is payment by the hour or flat fee billing with payments by milestones or by predetermined date;
 - b. The fees payable by the Client, or his or her Designate;
 - c. A payment schedule outlining when fees are due by the Client, or his or her Designate;
 - d. The currency in which the fee is to be paid by the Client, or his or her Designate;
 - e. The taxes to be paid by the Client, or his or her Designate; and
 - f. Any Administrative fee that may be charged to the Client, or his or her Designate. Such fees must be fair and reasonable pursuant to the *Code of Professional Ethics*.
- ii. Contingency billing is not permitted as a billing method for the Client, or his or her Designate.
- iii. Funds received from a Client, or his or her Designate, must be deposited in the Member's Client Account, pursuant to Sections 3.1.a and 3.2 of the *Client Account Regulation*.

Section 10 OBLIGATIONS OF THE CLIENT

- i. A Client, or his or her Designate:
 - a. Is responsible to provide to the Member all required documentation to process the file;
 - b. Must be aware of his or her responsibility for providing up-to-date and reliable contact information in a timely manner;

- c. Must be aware of his or her responsibility for providing accurate information and that any inaccuracies may negatively impact the outcome of the application; and
- d. Must be aware that the Member's obligations under the Retainer Agreement are null and void if he or she knowingly provides any inaccurate, misleading or false material information. The Client's financial obligations remain.

Section 11 DISBURSEMENTS

- i. A Member must identify the expected types of expenses for the scope of services to be rendered for which the Client, or his or her Designate, is responsible.
- ii. A Member must identify how the Client, or his or her Designate, will be billed for Disbursements.

Section 12 ISSUES OF DISPUTE

- i. A Member must include in the Retainer Agreement:
 - a. A statement about the relationship between the Member and the Council;
 - b. The process the Client, or his or her Designate, should follow in the event there is a dispute, pursuant to Article 12.2 of the *Code of Professional Ethics*; and
 - c. Contact information of the Council should the Client, or his or her Designate, wish to file a complaint if a dispute remains unresolved.

Section 13 TERMINATION

- i. A Client, or his or her Designate, has the right to terminate representation by a Member at any time according to applicable laws governing contractual arrangements in the jurisdiction where the Member resides and where the Member is licensed to provide services under the *Immigration and Refugee Protection Act*. A Member must specify what happens in the event the Client, or his or her Designate, terminates representation.
- ii. A Member must identify his or her right to terminate representation if the Client, or his or her Designate, fails to honour the Retainer Agreement. A Member must specify what happens in the event the Member terminates representation.
- iii. In terminating representation, a Member must ensure there is no prejudice to the Client.
- iv. A Member must identify what costs will be incurred by the Client, or his or her Designate, in the event of termination of representation.

Section 14 CONFIDENTIALITY

- i. A Member must include a statement that outlines how the Client's personal information and documentation will be protected.
- ii. A Member must notify the Client, or his or her Designate, of the preferred method of correspondence.
- iii. A Member must notify the Client that information is collected and protected according to the Council's *Code of Professional Ethics*.

Section 15 REFUND POLICY

- i. A Member must identify how unused fees will be refunded to the Client, or his or her Designate.
- ii. A Member must notify the Client, or his or her Designate, that fees are not refundable in the event of an application refusal.