CCLA Response to the Advertising & Fee Arrangements Issues Working Group Relative to Contingency Fees

INTRODUCTION

1. The County of Carleton Law Association ("CCLA") was formed in 1888 by a group of 60 lawyers and is now the second largest law association in the province of Ontario representing over 1900 members. Our membership is comprised of a diverse group of judges, lawyers, paralegals, articling students and law students.

RESPONSE OF THE CCLA

2. The CCLA and its members applaud the Law Society's review of issues of interest to the profession including the important issue of contingency fee arrangements ("CFAs").

3. The CCLA and its members agree that the overarching consideration in this discussion should focus on the LSUC's core principles of maintaining and advancing the cause of justice and the rule of law, facilitating access to justice and protecting the public interest.

4. Reform in the area of contingency fees is welcome and necessary. It is understood that a significant component of the LSUC mandate is to protect the public interest. Access to justice is also a critical component of the LSUC mandate. There can be no doubt that a robust, straightforward and fair contingency fee regime is very much in the interest of the public. A dysfunctional, complicated and one-sided regime will neither serve the public nor advance access to justice.

5. To be more specific, access to justice will not be served if the contingency fee regime produces results which are unfair for the lawyers providing the services. Most members of the public do not have the independent financial means to access the justice system. Lawyers who are prepared to assume the financial risks and burden to

facilitate access to justice for these clients must be appropriately compensated for doing so. To the extent the regime discourages or frustrates that goal, lawyers will be deterred from providing that access.

6. The CCLA is of the view that the following should guide any changes to the regime and regulations:

    a. The notion of standard form CFAs has merit but at the core they should be straightforward, clear and not overly complex.

    b. CFAs should *prima facie* be afforded the same protection of solicitor/client privilege as any other retainer agreement between lawyer and client. Any requirement that they be registered or filed runs counter to that principle.

    c. The actual terms of any given CFA need to remain flexible to reflect the differing risks of each case. One size does not fit all.

    d. The current regime has created problems with the costs component of any award or settlement. A solution must be fair to both the client and the lawyer for any contingency regime to be workable.

7. The CCLA's Working Group has consulted with several legal organizations on this issue and has received some feedback from its members. However, as of the date of this submission, we have only been able to review the submissions prepared by FOLA (the Federation of Ontario Law Associations) which were submitted to the Law Society on September 18, 2017.

8. CCLA members generally endorse the thoughtful submissions presented by FOLA although there is disagreement with respect to some of the positions set forth in FOLA's submission. In particular, there is no consensus among our members with respect to the proposition that lawyers and paralegals who work on matters that are governed by CFAs should not be required to record and report the amount and value of time spent on the matter. Many CCLA members believe lawyers who enter into

CFAs should be required to track their time and that the failure to do so is problematic in terms of assessing and awarding costs that are fair, reasonable and proportionate.

PROCESS CONCERNS

9. The CCLA is concerned that the process being utilized by LSUC to undertake this review with a view to implementing change is flawed.

10. LSUC has made it clear that its role is to protect the interests of the public and not the profession. If the contingency fee regime is to be effective, the interests of the lawyers providing the services must also be appropriately represented in the process of arriving at that solution. It is the view of the CCLA that simply seeking submissions from the various legal organizations will not produce the desired result of a workable, sustainable, fair and robust contingency fee regime. Accordingly, the CCLA is urging the LSUC to convene a committee of stakeholders which includes representatives from the LSUC and various legal organizations for the purpose of developing a workable, sustainable, fair and robust solution.

11. We appreciate the time and effort expended by the Law Society of Upper Canada and we welcome and look forward to continued consultation on the issue of contingency fee agreements.