

## **KEMP PIRIE CROMBEEN FAMILY LAW RETAINER AGREEMENT**

If you choose to retain Kemp Pirie Crombeen to prepare a Separation Agreement, please ensure you consider the following points.

It is impossible to predict what a Separation Agreement will cost, or how long it will take to prepare. Agreements are not prepared on a block fee basis. Kemp Pirie Crombeen requires a retainer deposit of \$ . An Agreement may cost as little as \$750.00, or may cost several thousand dollars. This depends on your individual situation.

You can lower these costs by gathering all of the financial documents needed on your own, prepare a list of your assets and debts (joint and sole), and complete the Intake Form and Financial Statement on your own, to the best of your ability. A Separation Agreement can only be finalized once the firm has those documents. The firm will provide you with a list of documents to gather, and forms to fill out. Only when all forms are completed fully, and financial documents are provided, an Agreement can be drafted.

Gathering financial documents is onerous. However, financial disclosure is essential to ensure that the Agreement is fair, and will not be set aside in future, should one party choose to contest it at a later date. It is essential that an Agreement be fair to both parties.

A Separation Agreement is finalized quickly and cheaply ONLY when both parties agree to what is set out in the Agreement. In addition, both parties must respect the terms of the Agreement after it is signed.

Many factors affect the preparation of a Separation Agreement. Lawyers have no control over which issues clients choose to argue. Separations are a difficult time, emotionally and financially. It is up to the parties to agree on all issues before an Agreement can be finalized. This firm cannot force your estranged spouse to sign a Separation Agreement.

In most cases, several negotiation letters are sent back and forth between the parties' lawyers before an Agreement can be drafted.

Our goal is to prepare Separation Agreements that will protect our clients.

## KEMP PIRIE CROMBEEN FAMILY LAW RETAINER AGREEMENT

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I HEREBY RETAIN and instruct Kemp Pirie Crombeen to advise me and act on my behalf with respect to MY FAMILY LAW ISSUES including:

CUSTODY  
ACCESS  
CHILD SUPPORT  
EQUALIZATION / DIVISION OF PROPERTY  
DIVISION OF PROPERTY FOLLOWING COMMON LAW RELATIONSHIP  
SPOUSAL SUPPORT  
ADOPTION  
CHILD PROTECTION ISSUES  
NEGOTIATION OF SEPARATION AGREEMENT  
UNCONTESTED DIVORCE  
CONTESTED DIVORCE

and such other matters as I may instruct you from time to time either orally or in writing.  
The effective date of this agreement is \_\_\_\_\_.

I AGREE to deposit with you, in trust, the sum of \$\_\_\_\_\_ and acknowledge that this sum will be held by you in a non-interest bearing account. I authorize and direct you to use such funds to pay for any disbursements incurred on my behalf and for interim accounts for fees, Harmonized Sales Tax, and disbursements.

I agree to make further deposits as requested. I understand that you will require the sum of \$\_\_\_\_\_ in trust on deposit at all times to cover anticipated fees, Harmonized Sales Tax and disbursements in advance of services being rendered or disbursements being incurred on my behalf. I agree and understand that you will withdraw your services, subject to court approval if required, if I do not make any deposits as requested from time to time.

I ACKNOWLEDGE that you will render interim accounts to me on a monthly or other periodic basis for fees, Harmonized Sales Tax and disbursements. I agree to pay these accounts upon receipt, and interest on any account remaining unpaid after thirty days.  
I understand that you will withdraw your services, subject to Court approval if required, if I do not pay your account when rendered.

I understand that Kemp Pirie Crombeen will bill me for ALL TIME spent on my file. I understand that I will be billed for the lawyer's time spent on making and receiving all phone calls, sending, reviewing and responding to all emails, receiving and responding to all messages, reviewing and responding to all letters and correspondence. I understand that this is in addition to any time spent by the lawyer in conference with myself, staff, and other lawyers.

I understand that I will be billed for the time that Kemp Pirie Crombeen staff spend working on my file, including receiving my phone calls, responding to my emails and messages, and preparing correspondence on my behalf.

I understand that if this matter proceeds to court, that I will be billed for the time of my lawyer and Kemp Pirie Crombeen staff in the preparation of all court documentation, and the review by my lawyer of all court documentation received.

I ACKNOWLEDGE that, except as otherwise provided in the Retainer Agreement, your fees will be based on the TIME SPENT on this matter on my behalf. However, I also understand that I will be billed a MINIMUM FEE for certain steps in a court proceeding which are set out BELOW.

I also understand that my lawyer may INCREASE the fees, depending upon the amount involved, complexity of the issues, the results obtained, urgency and other factors used by lawyers in setting a reasonable fee. I understand that I will be given notice IN ADVANCE if Kemp Pirie Crombeen decides to increase the fees due to the complexity of the issues, the results obtained, urgency or other factors.

You have agreed to make your time records available to me for my review at any mutually convenient time if I have any questions or concerns about them. I understand that Disbursements will include, but are not limited to, such items as transcripts, court fees, travel costs, computerized legal research, LPIC Levy Charge for Family Court Applications (onetime fee of \$50.00), Divorcemate Charge (onetime fee of \$50.00), word processing, facsimile charges and fees for counsel, agents and experts, photocopy charges and delivery charges.

I UNDERSTAND that the hourly rate for **Kathryn J. Pirie is \$375.00 per hour**, subject to the following **MINIMUM fees** for attendances at court or at examinations:

a)	Consent adjournment	\$375.00
b)	Obtain consent order	\$700.00
c)	Examination for discovery or cross-examination	\$4,000.00
d)	Pre-trial conference, settlement conference or case conference	\$4,000.00
e)	Contested Motion	\$4,000.00
f)	Trial or Hearing (Per day)	\$4,000.00

Preparation time is charged at the lawyer's hourly rate. If the preparation time causes the lawyer's time to exceed the minimum fees, the lawyer's actual time will be billed to me.

I understand that it may be necessary to hire various experts in order to properly represent my interests. This includes custody and access assessors, property appraisers, pension appraisers, accountants and business valuers. I understand that Kemp Pirie Crombeen will discuss this with me prior to hiring such experts, but that I am expected to pay in full for the services of these experts, in advance.

I authorize you to use other lawyers, clerks and students, as you deem appropriate at the established rates of your firm for their services. Rates may be increased annually, without notice. You will advise me of such hourly rates at my request.

The hourly rate for the Family Clerk Glenna Gaudette is \$120.00 per hour. Please ensure you c.c. Glenna Gaudette, assistant to Kathryn Pirie, on all emails sent to Ms. Pirie. Ms. Gaudette's email address is civil.law@kemppirie.com.

I understand that if the opposing party is a self-represented litigant this may result in increased legal fees.

**Kemp Pirie Crombeen has permission to email documents to me at the following email address: \_\_\_\_\_.**

**You have permission to mail documents to me at the following mailing address:**

\_\_\_\_\_

**If I change addresses at some point in the future while Kemp Pirie Crombeen office is still on retainer, it is my responsibility to notify Kemp Pirie Crombeen of any change in my mailing address.**

I AUTHORIZE AND DIRECT you to receive any funds to which I may become entitled in connection with this matter and deposit them in your trust account. I authorize you to apply such funds to any of your outstanding unpaid accounts to me for fees and disbursements.

I MAY TERMINATE this retainer at any time and you may withdraw your services in appropriate circumstances upon notice to me, subject to any required court approval.

I ACKNOWLEDGE receiving a copy of the financial productions required by the Child Support Guidelines, along with a copy of the relevant portions of the Family Law Rules relating to document disclosure.

I ACKNOWLEDGE receipt of a copy of this Retainer Agreement.

DATE: \_\_\_\_\_, 2020

\_\_\_\_\_  
WITNESS:

\_\_\_\_\_  
CLIENT

### **Child Support Guidelines – Financial Information Required**

- s. 21(1) -A parent or spouse who is applying for an order for the support of a child and whose income information is necessary to determine the amount of the order must include with the application,
- (a) a copy of every personal income tax return filed by the parent or spouse including any materials that were filed with the return for each of the three most recent taxation years;
  - (b) a copy of every notice of assessment and reassessment issued to the parent or spouse for each of the three most recent taxation years;
  - (c) where the parent or spouse is an employee, the most recent statement of earnings indicating the total earnings paid in the year to date, including overtime, or, where such a statement is not provided by the employer, a letter from the parent's or spouse's employer setting out that information including the parent's or spouse's rate of annual salary or remuneration;
  - (d) where the parent or spouse is self-employed, for the three most recent taxation years,
    - (i) the financial statements of the parent's or spouse's business or professional practice, other than a partnership, and
    - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the parent or spouse does not deal at arm's length;
  - (e) where the parent or spouse is a partner in a partnership, confirmation of the parent's or spouse's income and draw from, and capital in, the partnership for its three most recent taxation years;
  - (f) where the parent or spouse controls a corporation, for its three most recent taxation years,
    - (i) the financial statements of the corporation and its subsidiaries, and
    - (ii) a statement showing a breakdown of all salaries, wages, management fees or other payments or benefits paid to, or on behalf of, persons or corporations with whom the corporation, and every related corporation, does not deal at arm's length;
  - (g) where the parent or spouse is a beneficiary under a trust, a copy of the trust settlement agreement and copies of the trust's three most recent financial statements; and
  - (h) in addition to any information that must be included under clauses (c) to (g), where the parent or spouse receives income from employment insurance, social assistance, a pension, workers compensation, disability payments or any other source, the most recent statement of income indicating the total amount of income from the applicable source during the current year or, if such a statement is not provided, a letter from the appropriate authority stating the required information. O. Reg. 391/97, s. 21 (1); O. Reg. 446/01, s. 7; O. Reg. 25/10, s. 5.

## **RULE 19: DOCUMENT DISCLOSURE**

### **AFFIDAVIT LISTING DOCUMENTS**

**19. (1)** Subject to subrule (1.1), every party shall, within 10 days after another party's request, give the other party an affidavit listing every document that is,

- (a) relevant to any issue in the case; and
- (b) in the party's control, or available to the party on request. O. Reg. 114/99, r. 19 (1); O. Reg. 383/11, s. 5 (1).

### **EXCEPTIONS**

**(1.1)** Subrule (1) does not apply to the Office of the Children's Lawyer or to children's aid societies. O. Reg. 383/11, s. 5 (2).

### **ACCESS TO LISTED DOCUMENTS**

**(2)** The other party is entitled, on request,

- (a) to examine any document listed in the affidavit, unless it is protected by a legal privilege; and
- (b) to receive, at the party's own expense at the legal aid rate, a copy of any document that the party is entitled to examine under clause (a). O. Reg. 114/99, r. 19 (2).

### **ACCESS TO DOCUMENTS MENTIONED IN COURT PAPERS**

**(3)** Subrule (2) also applies, with necessary changes, to a document mentioned in a party's application, answer, reply, notice of motion, affidavit, financial statement or net family property statement. O. Reg. 114/99, r. 19 (3).

### **DOCUMENTS PROTECTED BY LEGAL PRIVILEGE**

**(4)** If a party claims that a document is protected by a legal privilege, the court may, on motion, examine it and decide the issue. O. Reg. 114/99, r. 19 (4).

### **USE OF PRIVILEGED DOCUMENTS**

**(5)** A party who claims that a document is protected by a legal privilege may use it at trial only,

- (a) if the other party has been allowed to examine the document and been supplied with a copy, free of charge, at least 30 days before the settlement conference; or
- (b) on the conditions the trial judge considers appropriate, including an adjournment if necessary. O. Reg. 114/99, r. 19 (5).

## **DOCUMENTS OF SUBSIDIARY OR AFFILIATED CORPORATION**

(6) The court may, on motion, order a party to give another party an affidavit listing the documents that are,

- (a) relevant to any issue in the case; and
- (b) in the control of, or available on request to a corporation that is controlled, directly or indirectly, by the party or by another corporation that the party controls directly or indirectly. O. Reg. 114/99, r. 19 (6).

## **DOCUMENTS OF OFFICE OF THE CHILDREN'S LAWYER OR CHILDREN'S AID SOCIETY**

(6.1) The court may, on motion, order the Office of the Children's Lawyer or a children's aid society to give another party an affidavit listing the documents that are,

- (a) relevant to any issue in the case; and
- (b) in the control of, or available on request to, the Office of the Children's Lawyer or the children's aid society. O. Reg. 383/11, s. 5 (3).

## **ACCESS TO LISTED DOCUMENTS**

(7) Subrule (2) also applies, with necessary changes, to any document listed in an affidavit ordered under subrule (6) or (6.1). O. Reg. 114/99, r. 19 (7); O. Reg. 383/11, s. 5 (4).

## **DOCUMENTS OMITTED FROM AFFIDAVIT OR FOUND LATER**

(8) A party who, after serving an affidavit required under subrule (1), (6) or (6.1), finds a document that should have been listed in it, or finds that the list is not correct or not complete, shall immediately serve on the other party a new affidavit listing the correct information. O. Reg. 114/99, r. 19 (8); O. Reg. 383/11, s. 5 (5).

## **ACCESS TO ADDITIONAL DOCUMENTS**

(9) The other party is entitled, on request,

- (a) to examine any document listed in an affidavit served under subrule (8), unless it is protected by a legal privilege; and
- (b) to receive, free of charge, a copy of any document that the party is entitled to examine under clause (a). O. Reg. 114/99, r. 19 (9).

## **FAILURE TO FOLLOW RULE OR OBEY ORDER**

(10) If a party does not follow this rule or obey an order made under this rule, the court may, on motion, do one or more of the following:

1. Order the party to give another party an affidavit, let the other party examine a document or supply the other party with a copy free of charge.

2. Order that a document favourable to the party's case may not be used except with the court's permission.
3. Order that the party is not entitled to obtain disclosure under these rules until the party follows the rule or obeys the order.
4. Dismiss the party's case or strike out the party's answer.
5. Order the party to pay the other party's costs for the steps taken under this rule, and decide the amount of the costs.
6. Make a contempt order against the party.
7. Make any other order that is appropriate. O. Reg. 114/99, r. 19 (10).

### **DOCUMENT IN NON-PARTY'S CONTROL**

(11) If a document is in a non-party's control, or is available only to the non-party, and is not protected by a legal privilege, and it would be unfair to a party to go on with the case without the document, the court may, on motion with notice served on every party and served on the non-party by special service,

- (a) order the non-party to let the party examine the document and to supply the party with a copy at the legal aid rate; and
- (b) order that a copy be prepared and used for all purposes of the case instead of the original. O. Reg. 114/99, r. 19 (11).

### **FAMILY LAW ACT**

#### **Setting aside domestic contract**

(4) A court may, on application, set aside a domestic contract or a provision in it,

- (a) if a party failed to disclose to the other significant assets, or significant debts or other liabilities, existing when the domestic contract was made;
- (b) if a party did not understand the nature or consequences of the domestic contract; or
- (c) otherwise in accordance with the law of contract. R.S.O. 1990, c. F.3, s. 56 (4).