

Paul Cogswell

Rōia | Takawaenga
Barrister | Mediator

FortyEight Shortland Barristers

Terms of Engagement as Barrister

Brief

The terms of my brief as a barrister are set out in this document and my covering email or letter unless otherwise agreed in writing.

Instructing Solicitor

An instructing solicitor is required for instructions involving Court proceedings.

For other work, including arbitrations, mediations and Construction Contracts Act claims, I am authorised by Te Kahui Ture o Aotearoa/the New Zealand Law Society to accept instructions directly from clients.

This includes corresponding, negotiating and meeting with opposing parties or their counsel until such time as Court proceedings are instigated, at which time an instructing solicitor will be required.

You (the client) will be responsible for all fees or charges incurred by my instructing solicitor in retaining me as a barrister.

In the event of non-payment of fees or charges the instructing solicitor will not be liable to indemnify me in respect of any fees or charges which shall be due and payable but shall be obliged (if instructed by me and at my cost) to take all reasonable steps to recover all or any part of any outstanding fee or disbursement charges including if requested by me to issue court proceedings in an appropriate forum.

My obligations to the client: Client Care Rules

The client has the benefit of the Lawyers Conduct and Client Care Rules, a copy of which is available on the New Zealand Law Society website at: www.lawsociety.org.nz. The rules require that subject to duties owed to the courts and the justice system, I must (amongst other requirements):

- *act competently, in a timely way, and in accordance with instructions received and arrangements made:*
- *protect and promote your interests and act for you free from compromising influences or loyalties:*
- *discuss with you your objectives and how they should best be achieved:*
- *provide you with information about the work to be done, who will do it and the way the services will be provided:*
- *charge you a fee that is fair and reasonable and let you know how and when you will be billed:*
- *give you clear information and advice:*
- *protect your privacy and ensure appropriate confidentiality:*
- *treat you fairly, respectfully, and without discrimination:*
- *keep you informed about the work being done and advise you when it is completed:*
- *let you know how to make a complaint and deal with any complaint promptly and fairly.*

How do I charge?

I will only charge a fair and reasonable fee based on the circumstances involved and nature of the work undertaken. My hourly rate of NZ\$400 plus GST is used as the primary but not exclusive measure of value.

Wherever practicable or cost effective to do so I may delegate work to a junior barrister who I supervise whose hourly charge out rate will be less than my hourly rate. I may take into consideration such factors as the urgency, complexity, level of expertise, importance and the result achieved when fixing my fee.

Estimates

I am always willing to provide a fee estimate. Any fee estimate is my opinion as to what the fees for my work are likely to be. Fees estimates are based on known factors and do not constitute a fixed fee arrangement. If it appears that the estimate will be exceeded, I will promptly advise you of the reasons, and obtain further instructions from you.

Multiple parties

If you are a couple, partnership, unincorporated group, or a group or mixture of legal entities then unless otherwise agreed in writing each of you is jointly and severally liable for payment of all my fees and those of my instructing solicitor in accordance with these terms.

Retainer, if required

I may require the instructing solicitor to obtain from the client a deposit as an initial retainer for my future fees and disbursements so that it is held by the instructing solicitor as a fund from which the instructing solicitor can pay amounts owing to me. The instructing solicitor will obtain from the client a retainer in a sum determined by me, if at all. I may require the initial retainer to be refreshed as it is applied to payments of amounts owing to me and for my future fees and disbursements. The retainer will be held by the instructing solicitor as stakeholder. Where I require a retainer, the instructing solicitor is authorized to deduct any amount owing to me from any amount the instructing solicitor is holding for the client. I may at my discretion require further or additional security for my future fees and disbursements.

Payment of Fees and Disbursements

My invoices are due for payment in full within 14 days.

I may also invoice for disbursement charges (such as photocopy, travel and other office expenses) as these disbursements arise. Invoices for fees and disbursement charges will be rendered electronically by email.

Professional Indemnity Insurance

I hold professional indemnity insurance that meets or exceeds the minimum standards specified by the New Zealand Law Society.

Document Retention

Upon completion of the brief I will usually return all original files and documents that the client or my instructing solicitors have provided me. I retain all files and documents created by me for the purpose of conducting the brief. I will destroy all hard and/or electronic copies of all documents held by me on your behalf after seven (7) years following the completion of the brief. I will do that without notice to the client or the instructing solicitor. It is the obligation of the client or the instructing solicitor to request the return of any and all documents if that is required.

Complaints procedure

If the client has a complaint about any aspect of my work, then in the first instance either the client or the instructing solicitor should speak to me or meet with me. I place high value on client satisfaction and will always endeavor to attempt to resolve any complaint. If the client or my instructing solicitors do not wish to meet or speak with me or are dissatisfied with the outcome of the initial discussion, then the instructing solicitors should write to me setting out the complaint and the reasons for the dissatisfaction as well as a proposal for resolution of the complaint. I may refer the complaint to a senior practitioner to obtain an independent view on the complaint. If the client or my instructing solicitors are unsatisfied with a result of these steps then there is the right to lodge a written complaint with the New Zealand Law Society's complaints service, details of which are available on the New Zealand Law Society website at: www.lawsociety.org.nz.

Acceptance for current and future instructions

These terms will apply in respect to my current and any future instructions unless otherwise varied in writing. There is no need for you to sign these terms of engagement in order to accept them; you will accept these terms of engagement by you or the instructing solicitor continuing to instruct me to work.

Thank you.

