

Highlights from Chapter 8—Alternative Fee Arrangements

There is no universal definition for an alternative fee arrangement (AFA). They are generally described as an alternative method for clients to pay for legal services, which may or may not include a modified hourly billing model. Common forms of AFAs include:

- **Blended rates**—average rate of two or more lawyers (and paralegals)
- **Capped fees**—payments up to a defined maximum amount
- **Contingency fee agreements**—generally a percentage of fees from settlement or award
- **Fixed or flat fees**—set price for discrete task that does not depend on hours spent
- **Retainers**—single or multiple, lump-sum payments to cover fees and disbursements
- **Success fees**—fee based on outcome of the case
- **Task-based agreements**—fee categories based on type of work performed

Optimal uses

- **Advocacy organizations** (e.g. advocacy services for low-income and vulnerable clients offered as flat and sliding-scale fee arrangements);
- **Small firms with low overhead** (e.g. fixed fees can be an effective way to build a practice for new lawyers or small firms);
- **Hybrid representation** (e.g. practice models that mix flat or sliding-scale fees with traditional up-front retainer payments. This can help mitigate issues around scope creep on a file);
- **Mediation and alternative dispute resolution services;**
- **Criminal defence litigation** (e.g. a lawyer can offer a set list of prices for various legal services—such as preliminary hearings or trial appearances).

Advantages	Disadvantages	Ethics and professional responsibility considerations
<ul style="list-style-type: none"> • Mitigate unpredictable costs • Meet client expectations • Pipeline to unbundled legal services • Long-term client relationships 	<ul style="list-style-type: none"> • Limited application to large or complex cases • Administrative costs to develop a new model • Burden on the client • Limitation of contingency fee agreements 	<ul style="list-style-type: none"> • Negative client expectations • Flat fee reviews by courts

Opportunities for systemic, structural, or legal change

The consultation participants and research highlighted three ideas where changes could be considered to promote AFAs in British Columbia: sliding scale fees for civil litigation mediation; litigation budgets; and client value adjustments.