Sample Long Form Litigation Cost Estimate Template*

FIRM NAME: _____

Matter: _____

Cost Estimate Period: _____

ASSUMPTIONS

This cost estimate is based on a number of assumptions as follows:

1. The legal practitioner and staff's time required for each process or procedure cannot be quantified precisely. All estimates are subject to the inherent unpredictability of litigation. Irrespective of what is set out in this estimate, the firm is entitled to charge a reasonable amount for all services rendered.

2. The process described below may be commenced and interrupted by a settlement discussion. The estimate is based on the number of hours the legal practitioner estimates each procedure will require based on the hourly rate of the legal practitioner or staff member who will be required to perform it. Some services require the work of more than one legal practitioner or staff member. For example, documents prepared for submission to opposing parties and the court are carefully checked by more than one member of the firm, and typically go through several draft versions before completion.

3. Services may be outsourced where expediency or cost savings can be achieved. Outsourcing refers to suppliers which are not part of this firm and who are not employees, partners or associates of the law firm. It is likely that an advocate or trial attorney will be appointed on this basis.

4. This estimate does not include a comprehensive estimate of the cost of experts and expert reports. In most cases, expert witnesses, such as forensic accountants and valuators are required. Other experts may also be retained depending on the circumstances of the case, including economists, engineering experts, construction experts, real estate appraisers, a document analyst, etc. These skilled professionals charge fees on an hourly basis. The experts envisaged, and the very rough estimate of expert fees is set out herein.

5. The hourly rates used in this estimate are:

   Senior Counsel: R_____

   Senior Junior Counsel: R_____

*Obtained and adapted by Sonja Labuschagne and Ettienne Barnard from the Law Society of Ontario, http://www.lsuc.on.ca/WorkArea/DownloadAsset.aspx?id=2147491192 and
the Law Society of South Africa Legal Education and Development Insolvency Procedure Practice Manual, 2018
For other South African examples see Law Practice Assist App at https://app.igenapps.com/2120282

Junior Counsel: R_____

Paralegal: R_____

Candidate Attorney: R_____

Messenger or Clerk: R_____

These hourly rates increase annually by no more than 5%. As this is only an estimate of the time required to complete the case, the rates used are for the current year only.

6. Every legal practitioner is fully committed to obtaining the best possible result for the client, but the results of litigation may be affected by

   1) the facts of the case

   2) how witnesses deliver their evidence at trial

   3) whose evidence the trial judge prefers, and

   4) principles of law.

7. The fees and disbursements are payable regardless of the result unless a contingency fee agreement was signed between the legal practitioner and the client. Where a success fee contingency fee agreement has been signed, the rates and fees set out in this agreement will be regarded as the normal fees for the purpose of calculating the cap on the success fee.

8. Should the client withdraw from the matter, or for any reason terminate the mandate of the firm, the client will still be legally bound for all costs and disbursements incurred before the matter was withdrawn or the mandate was terminated. Such amounts will be due immediately on withdrawal and/or termination. The client also realizes that should he/she/it withdraw from the matter or terminate the mandate a costs order may be made against him/her/it in favour of the opponent or other parties.

ASSESSMENT OF THE MATTER, DEVELOPMENT AND ADMINISTRATION

Fact Investigation R_____

All actions to investigate and understand the facts of a matter, including

- interviews with clients and potential witnesses
- identification and verification of all appropriate parties, including identification, corporate searches and letters of authority
- review of documents to learn the facts of the case
- consultations with investigators
- all related communications and correspondence, including e-mails and teleconferences

Case Analysis, Development of Case Strategy R_____

The thinking, strategizing, and planning for a case, including

- discussions, writing, and meetings on case strategy
- legal research for case assessment purposes, for developing an initial theory of the case, and basic case strategy
- preparation of written opinion, if required or appropriate

Experts and Consultants R_____

Identifying and interviewing experts and consultants, whether testifying or not testifying, consulting with them, developing expert reports, reviewing and understanding expert reports, reviewing opposing party's expert reports, and

- identifying the required experts and selecting the best expert for each issue, including conducting research to find the best expert
- identifying the scope of each expert's potential evidence

Offers to Settle, Settlement, and Alternative Dispute Resolution (ADR) R_____

Note: Efforts to settle can take place at any time during the case.

All settlement activities, including

- advising on alternative dispute resolution options
- planning for and participating in formal and informal settlement discussions, four-way meetings, conferences, and hearings
- pursuing and participating in mediation and other non-binding (ADR) procedures
- pre-litigation demand letters and ensuing discussions
- drafting offers to settle, reviewing offers to settle from opponents
- implementing a settlement
- drafting minutes of settlement

Disbursements R_____

PRE-TRIAL PLEADINGS AND MOTIONS

Pleadings R_____

Developing, drafting, editing, and reviewing Summons, Particulars of Claim, Plea, Counter-Claims, Plea in reconvention, Third-Party Claims, other pleadings, Applications, Founding Affidavits, Answering Affidavits, Opposing Applications, Replying Affidavits.

Developing, responding to, and arguing motions directed at pleadings such as summary judgement, irregular proceedings, exceptions, motions to strike, demands for particulars, and special pleas

Interim and Interlocutory Motions and Motions without Notice R_____

Developing and discussing strategy for interim remedies, including motions to vary interim orders (note: some interlocutory motions are much more complicated than others)

Motions for interlocutory injunctions, Mareva injunctions and Anton Piller Orders, where appropriate, require special considerations

Assessment as to whether or not a motion without notice, such as Mareva injunctions or an Anton Piller Order is appropriate

Conducting legal research for interim and interlocutory motions

Preparing motions, affidavits and motion records

Reviewing opponents' motion documents

Responding to opponents' motion documents

Cross-examinations on affidavits in support of motion

Cross-examinations of non-party witnesses

Preparation of chronology and oral argument

Preparation of Heads of Arguments

Attending to settlement discussions, meetings and communications to settle interim motion

Preparing Offer to Settle

Preparing for and attending at hearing of motion

Attending to and enforcing any remedy or implementing terms of interim order, including

- drafting or reviewing order
- attending to issuing and entering order
- implementing procedures to enforce order

Court Mandated Conferences, Case Management and Mandatory Mediation R_____

Preparing for and attending hearings and conferences required by court order or procedural rules and preparation of supporting documents, such as pre-trial minutes mediation briefs, case conference briefs or settlement conference briefs

Motions for Final or Summary Judgment R_____

Developing and discussing strategy for remedies

Conducting legal research for motion

Preparation of chronology and oral argument

Preparation of Heads of Argument

Preparing for and attending hearing of motion

Attending to and effectuating any remedy or implementing terms of interim order, including

- drafting or reviewing order
- attending to issuing and entering order
- implementing procedures to enforce order

Disbursements R_____

Appeals from Interim, Interlocutory or Summary Judgment Motions R_____

Considering reasons for decision of motion

Assessment of potential grounds and prospects for success on appeal

Where required, assessment of prospects of success on motion for leave to appeal

Preparation and service of Notice of Appeal

Assessment of whether a motion for stay is required and, if so, preparation of Notice of Motion, Affidavit, chronology and attendance for oral argument on the motion

Assessment of whether any new evidence is required on appeal and the test for introducing it

Preparation of chronology and oral argument on appeal

Preparation of Heads of Arguments

Preparation of Offer to Settle the results of the motion

Discussion with clients and opposing counsel as possibilities of settlement of the result of the motion

Preparing for and attending at hearing of motion

Attending to enforce any remedy or implementing terms of interim order, including

- drafting or reviewing order
- attending to issuing and entering order
- implementing procedures to enforce order

DISCOVERY

Documentary Disclosure and Production R_____

Attending to disclosure and production of documents in accordance with court rules, including,

- gathering of documents, including electronic records
- reviewing and identifying documents for production
- reviewing documents for privilege, making and responding to privilege claims
- preparing Affidavits of Documents
- responding, objecting to, and negotiating requests for production of documents.

Examinations for Discovery R_____

Planning and preparing for examination for discovery of client and opposing parties, including

- preparing and serving notices for examination of discovery
- communicating with opposing or other party's counsel on scheduling and logistics
- reviewing documents and pleadings
- meetings with client or third-party witnesses
- Attendance at examination for discovery of client and of opposing parties

Attending to all post discovery matters, including

- reviewing transcripts with client
- answering undertakings

Discovery Motions R_____

Developing, responding to, and arguing all motions that arise out of the discovery process

Motions for undertakings and refusals to be answered

Disbursements R_____

TRIAL PREPARATION AND TRIAL

Fact Witnesses R_____

Preparing for examination and cross-examination of non-expert witnesses

Expert Witnesses R_____

Preparing for examination and cross-examination of expert witnesses

- review of expert reports and discussion with expert to ensure that facts and assumptions are correct
- service of expert reports at least 90 days before trial
- review of opposing parties' expert reports and conferences with clients and expert witness to assess their impact, including discussion with expert about supplementary or responding report

Other Trial Preparation R_____

All other time spent in preparing for trial, including

- developing overall trial strategy
- preparing opening and closing arguments
- identifying documents for use at trial
- preparing factum, Book of Authorities, Exhibit Book and Agreed Statement of Facts
- updating research

Pre-trial Hearings R_____

Preparing for and attending at pre-trial conferences including preparation of pre-trial conference briefs

Attendance at Trial R_____

Preparing for and attending at trial including preparation of trial briefs

Post-Trial Motions and Submissions R_____

Developing, responding to and arguing all post-trial matters in trial court including assessment and claims for costs

Preparing Bill of Costs and submissions on costs

Enforcement R_____

Enforcing and collecting judgments

Disbursements R_____

APPEAL

Appellate Motions and Submissions R_____

Note: The services under the deposit with the law firm terminate at the conclusion of the trial or application. All services in connection with an appeal should be subject to a new deposit with a cost estimate.

Developing, responding to and arguing motions and other filings before a reviewing body, such as motions and other filings for stay pending appeal

Reviewing trial transcripts

Perfecting appeals

Appellate Briefs R_____

Preparing and reviewing appellate heads of argument

Oral Argument R_____

Preparing for and arguing an appeal before a reviewing body

Disbursements R_____

Examples of Disbursements incurred by the legal practitioner

(Note: Not all disbursements are applicable in every case)

- Searches – corporate, title, deeds, motor vehicle, drivers license,
- Filing clerk and agent for searches, filing in court and service of documents
- Providing of security for costs
- Photocopies and binding of applications
- Correspondent charges

TOTAL ESTIMATED COST R_____

VAT is added to amounts as required.

The law firm requires a deposit in the amount of R_____. Interim accounts are submitted at appropriate intervals and are due within 30 days of receipt. The law firm will request that the deposit be refreshed as the case progresses. The failure to pay outstanding accounts or to provide an additional deposit as requested, may lead to no further services being rendered by the law firm. Interest is payable on outstanding accounts 30 days after submission at the rate shown at the bottom of the account.

COST ESTIMATED IN THIS DOCUMENT WERE READ AND ACCEPTED AS A MERE ESTIMATE WHICH IS SUBJECT TO CHANGE ON REASONABLE NOTICE AND SIGNED AT _____ ON _____ 20__

BY _____ (PRINT FULL NAMES)

WHO BY HIS/HER SIGNATURE BELOW ACKNOWLEDGES THAT:

1. HE/SHE MAY ASK FOR AN EXPLANATION BEFORE SIGNING;
2. THIS ESTIMATE WAS EXPLAINED TO HIM/HER ON _____ AT _____;
3. HE/SHE HAS THE RIGHT BEFORE SIGNATURE TO NEGOTIATE ON THE CONTENT OF THE HOURLY RATE AND OTHER ASPECTS CONTAINED HEREIN;
4. HE/SHE IS DULY AUTHORISED TO SIGN THIS COST ESTIMATE AND THE APPLICABLE MANDATE.

_____ (FULL SIGNATURE IF YOU AGREE TO ALL OF THE ABOVE)