CONDITIONAL AND CONTINGENCY FEES - MASTER LIST OF PROS AND CONS

The statements made in the first column on the left of this List are based on the structure of the conditional fees system currently implemented in England and Wales and the contingency fees system in Canada . The second column sets out the different views expressed by members of the Working Party on Conditional and Contingency Fees. Members of the profession are invited to set out their comments in the third column. The advantages and disadvantages which apply to both conditional and contingency fees have been marked with an asterisk.

PUBLIC

ADVANTAGES:

		Comments made by members of the Working Party:	**Comments made by the general membership:**
1. *	The system increases access to justice to those, particularly the middle class, who cannot afford to pay their own lawyers and who are not eligible for legal aid.	- Inclination to take legal action is personal - priority differs from man to man. - Unless there is strong evidence from practising countries to support this, we should not accept this proposition too readily. One should never lose sight of the fact that a readily winnable case with a paying defendant could always find legal representation nowadays whereas the plaintiff in risky cases will have difficulties finding lawyers and after the event ("ATE") insurers even with conditional fee agreement ("CFA"). If CFA is to be coupled with abolition of legal aid, access to justice will likely decrease rather than increase.	

2. *	It enables lawyers to offer more flexible and competitive price options to consumers.	- Public should be made aware of ultimate risk of costs.	
3. *	Acceptance of risks of litigation by lawyers who are better equipped to assess such risks than clients.	- Particularly experienced litigation lawyers. -The risk remains primarily that of the litigant - the lawyer shares the burden. - Lawyers know law but clients know facts. Lawyers not always in a better position to assess risks. After all, its client's case, it doesn't make sense for lawyers to accept his risk.	
4. *	Lawyers can spread the risks and costs across a wider range of clients by adjusting success fees to reflect particular circumstances and by insurance.	- 1. May be not an advantage to the public. - 2. Lower tax. - This is not allowed by the courts in England, which held that the reasonable level of success fees was to be assessed on a case by case basis. No scope to spread risks amongst a portfolio of cases by individual lawyers. - Not an advantage to the public. -Advantage to bigger firms more than to the public.	

5. *	It encourages greater level of commitment by the lawyers to their case.		- If lawyers served non-CFA, as well as CFA clients, which category would they be more comfortable with? - 1. There is no evidence that lawyers paid by the hours are not committed. Nor evidence that CFA lawyers handle cases better for their clients. - 2. Increased commitment of lawyers is as much a con as a pro - loss of objectivity, incentive for illicit practice, undersettlement.	
	(i) *	Success fee will encourage lawyers to pursue claims.	- Providing it is a "winnable" case. - Depends on the level of success fee. If threshold for success fee is low enough, it may encourage lawyers to settle. - Counter-balanced by disincentive produced by risk bearing. - Flexible attitude reflective of strength of case in hand. - The pursuit of claims which would not otherwise run is not obviously of any benefit to the public.	

	(ii) *	Success fee will encourage lawyers to maximize potential recovery.	-Flexible attitude reflective of strength of case in hand. - Not necessarily, it might. - Not necessarily. Depends on the definition of 'success'. - Different if contingency. - How would it? Lawyers are not paid by a percentage of the amount recovered.	
	(iii) *	Success fee will encourage lawyers to complete claim as soon as possible.	-Flexible attitude reflective of strength of case in hand. - Yes, lawyers under CFA may have incentive to complete case asap, but is that always in client's best interests? The lawyers have incentive to omit to investigate deeper and/or obtain better evidence that might be useful to client, just for the sake of completing the case more quickly so that they can get their fees. - quicker = less work = less costs? - If the chances of success are high, lawyers may drag the case on to increase the amount of costs, hence, success fee which is based on a percentage of the total number of hourly charge.	

6. *	Claimant enters a cost-free and risk-free zone with no financial incentive to accept reasonable offers or payments into court. This is an advantage in so far as the public are the winners in any given litigation. Arguably, insurers will be the losers although increased costs may ultimately be shifted to the public through increased insurance premiums.	- 1. If costs go up, premium will follow. - 2. In England and Wales - legal aid does not pay costs of successful defendants. - This assumes there is insurance. - Public (i.e. claimants) must be given full information on actual risk - losing costs leading to bankruptcy even! - especially if availability of ATE insurance not to be solicited by the Hong Kong Law Society.	
7. *	Better defence for defendants opposing a weak claim by a wealthy and oppressive plaintiff.	- Success fee. - Why?	

8	Increased burden in losing a claim may encourage the defendants to pursue earlier settlement where the prospects of a successful defence are less likely.	- 'MAY' - This may be covered by point 7. - By the same token, defence may put pressure on the CFA lawyer by dragging the case along to drain his resources. He will then be very tempted to advise his client of a quick (and low) settlement. The same result could be obtained if we pass a law that the loser of any litigation is to be shot. - Not if they are insured or themselves have CFA.	
9.	In the case of contingency fees, costs are reduced because unlike conditional fees, the losing party does not have to pay the success fee or ATE insurance premium.		
10	Contingency fees encourage lawyers to be more efficient as his reward depends on the outcome of litigation, not on the hourly rate charged.		
11.	Cases should settle earlier where contingency fee arrangement is used.		

PUBLIC

DISADVANTAGES:

Access to justice:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
1. *	The introduction of CFAs may lead to abolition of legal aid for the majority of claims. Moving people away from legal aid will only work for those able to afford the insurance costs - i.e. the middle class. The present legal aid category will still be needed.	- If that is true, perhaps legal aid will continue. - Therefore, legal aid should co-exist with CFAs. - It depends on government policy. There is a risk this will happen. - The concept of conditional fees is difficult in a split profession and it might be better to have a proper legal aid test along the lines of the conditional scheme for personal injuries, rather than a conditional fees system.	

2. *	CFAs may not be equally successful in areas of litigation other than personal injury ("PI") work. The success in PI has been based largely on a combination of 2 factors, i.e. high success rate and large volume. These 2 factors make PI cases attractive to ATE insurance providers, so that insurance has been readily available.	- Has insurance been readily available? - yes - in England and Wales. - no - in HK. - but legal aid can offer it, expand Supplementary Legal Aid System ("SLAS"). - CFAs to be limited to certain categories of cases only, emphasis should be on the primary objective of increased access to the litigation system by individuals outside SLAS. CFAs should not degenerate into becoming a tool of entrepreneur litigants!	
3.	It is not clear that there will be insurance cover available either after the event or before. It is likely to be at a prohibitive rate given the level of Hong Kong legal fees. In England and Wales the cost of cover has increased 3,500% in 6 years (£85 to £3,045).	- 1. Who pays? - 2. When? - Public need to be informed of the English experience and to be given the explanation on why ATE insurance might not become available: if that is the Council's final say.	

4.	The cost of litigation overall will increase due to the cost of insurance and the increased fee upon success. The possibility of a losing party facing an uplifted fee makes insurance necessary under this system. But ATE insurance will not work unless available comprehensively at realistic prices. ATE insurance will also not work if there is competition from extensive legal aid system. If there are to be required forms for conditional fee agreements with a requirement for insurance to back them then the situation in England and Wales may be duplicated where the system has broken down due to its uncertainty and complexity, with agreements being held unenforceable due to various deviations from the accepted wording or the ancillary requirements of disclosure and explanation to the client etc. This will impede access to justice.	- The difference between 'contingency' and 'conditional' fee arrangements must be made clear. So should the following: (a) US system of each party paying its own costs and (b) HK system of party and party costs and costs in the cause. - Do not see why possibility of losing party facing an uplift fee makes insurance necessary. - Can we work out CFA without insurance?	
5. *	Plaintiffs with strong merits would easily find a lawyer to take up their case. Lawyers would be less willing to take on less meritorious cases. Under the present system, a lawyer has an incentive to put in time and effort to cases as he knows he would be paid whatever the outcome.	- Plaintiffs with strong merits would easily find a lawyer to take up their case, problem is: can they fund the litigation? Under the present system, costs on account have to be deposited with the lawyers' firm. - The last sentence is a bit optimistic. Lawyers may put in time and effort to cases if he knows he would be paid whatever the outcome. But in CFAs, there is also an incentive to get the success fee.	

6. *	Motivation is wrong - a change to the legal regime is being made for fiscal reasons: to save money on the legal aid budget. See the paper from the Director of Audit on the Provision of Legal Fees. Conditional fees may not be the best way of doing this. They do not appear to have been the Director of Audit's first choice, there is also franchising and tender for legal aid work. Furthermore a change to the whole of litigation funding is being mooted whereas the problem with the legal aid budget seems largely confined to matrimonial cases (36% of the legal aid budget in the year 2000-01).	- Is there a breakdown on the type of cases with legal aid certificates? - Not if we make it clear CFAs will not be a substitute for legal aid. - It is difficult to classify this as a pro/con point. But I agree to this point entirely. In fact if one reads the report carefully, the Director of Audit did not really analyze how legal aid expenditure, including the payroll and other costs of the Legal Aid Department, could be reduced without affecting this important public service. In fact, the overwhelming majority of personal injury cases are self-financed or even profit-making, whether done in-house or briefed out. Other heavy expenditure on criminal, matrimonial and public law cases could hardly be reduced by the introduction of CFA.	
Costs:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
7.	CFAs lead to an escalation in cost. Claimant enters a cost-free and risk-free zone with no financial incentive to accept reasonable offers or payments into court.	- Not if a proper scheme is worked out.	

8.	Unsuccessful defendants will be burdened by the additional cost penalty of paying a successful claimant's uplifted fees. This is especially so in the light of the ability of a successful claimant to recover both fees and ATE premiums paid.	- Depends on what scheme is implemented.	
9.	Anecdotal material in England suggests that defendants are litigating more aggressively. If a claimant has insurance, the defendant knows that if he wins he will recover the costs from the ATE provider. If he loses, he may have to pay up to double his opponent's usual costs because of the success fee.	- Is this a pro or con? - Is it true? - No insurance?!	
10.	In any event, disputes over the level of success fee and ATE insurance premium seem inevitable as they depend on subjective factors on the plaintiff's side which the defendants are in no position to know or challenge until the same are litigated. It is however difficult to imagine how the courts can assess what is reasonable in a particular case, as Lord Hoffman said in Callery v. Gray.	- Depends on the scheme to be implemented. - Not if a proper scheme is worked out, such as the SLAS. - This could (and should) be addressed by way of legislation (main or subsidiary) on 'what the lawyer and his client have put together, let no taxing master put asunder'. - This assumes there will be insurance and that the HK scheme will allow courts to review success fee levels.	

11.	In England and Wales, the system has led to a new industry of satellite litigation about the recoverability and the size of success fee and ATE insurance premium and to the creation of a new class of person, the costs negotiator.	- This could (and should) be addressed by way of legislation (main or subsidiary) on 'what the lawyer and his client have put together, let no taxing master put asunder'. - Can we merely learn from the English system, and not adopt it?! - Costs negotiators are more of a result of the Woolf reforms in England.	
12.	There is nothing to stop defendants from acting under CFAs. If defendant CFAs become common, ATE companies in England & Wales say they are likely to respond by putting up premium or by imposing higher success criteria on cases which they are willing to underwrite.		
13.	As success fee is a percentage of costs, this forms the incentive to increase base costs.	- Yes, in terms of the hours clocked in. - No, in terms of the hourly rate. - No more of a problem than the standard hourly fee approach.	

14.	Increased insurance costs will ultimately be shifted to the public through increased insurance premiums. Therefore, the overall increased funding will be borne by the public at large.	- But remote. - Depends on the insurance arrangements, if any, there are. - as long as the burden is not transferred to the lawyers' own professional indemnity insurance. - Not if there is no insurance required.	
15.	In the case of contingency fees, the plaintiffs will receive lower amounts of net recoveries (after payment of contingent fees), unless damages awarded by the courts are inflated to ensure adequate net recoveries by meritorious claimants.		

LAWYERS

ADVANTAGES

Financial:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
1. *	The firms geared up to do volume insurance work which have the strength to win a competitive bidding war with the large insurance companies about the size of success fees and the cost of disbursements could attract a large body of claim work. There is a corresponding disadvantage to smaller firms, particularly those engaged in legal aid work.	- Just another example of bigger is better in the 21st century law practice. - Will apply 1. Defendant Insurance. 2. Legal Expenses Insurance.	

		- This is in fact a con.	
2. *	A new body of litigant may arise being the person without legal aid who presently cannot afford litigation.	- Wonder if CFAs should not only apply to litigants in person (natural persons), and also the type of cases limiting to litigating for recovery of pecuniary damages (including compensation to bodily injury). - The English experience suggests CFA is used predominantly in PI cases only, where, if the case is a winning one, they would get represented readily at present. - Not agree with the above statement as CFA is used in insolvency, defamation and pro bono cases as well.	

3. *	The system gives lawyers flexibility in fee arrangements.	- Gives more flexibility, not complete flexibility. - Gives an option to lawyers which they do not have under the present system. -Doubtful if flexibility would work for the profession as a whole: note cut-throat fee reduction re conveyancing. - This cannot be a pro. It gives clients an option (no win no pay) that is very much to their advantage but not to the advantage of the lawyers. - Any impression of flexibility is likely to be illusory. Clients in particular fields will insist on conditional fees and lawyers, if they want to do the work, will have no option but agree.	
4. *	Lawyers have common financial interest with client in succeeding in the client's claim.	- This is in fact a con, lawyers losing their objectivity. Is there any evidence that lawyers being paid by the hour work less conscientiously? - This could be a pro or con.	

5. *	The system gives lawyers work which they would not otherwise have.	- Not if it just substitutes work from legal aid. - Work which would occupy time but which may lead to taxation write-off. - Must ensure such works will not substitute or reduce legal aid. - Yes, the system can give work which is not currently in the legal aid regime to lawyers. But if legal aid is cut as a result of the introduction of CFAs, it will not increase the volume of work of lawyers. - The English experience suggests that CFA is used predominantly in PI cases only, where, if the case is a winning one, they would get represented readily at present.	

6. *	Incentivisation for pro-bono cases.	- It encourages lawyers to take on meritorious cases which would otherwise be pro bono work. Hence, another body of litigants. - As indemnity rule is abolished, can now claim. - Pro bono cases a category for CFAs. - The effect will be minimal, if any, as this applies only to cases with a reasonable chance of success and a solid defendant who is good for damages and costs.	
7. *	It enables lawyers to compete with debt collectors.	- If you think this is a good thing. - Why should we? And could we? They collect by calling the debtors at midnight.	

Ethics/Conduct:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
8. *	It gives lawyers a more direct and personal involvement in the case.	- This is in fact a disadvantage - lawyers would be perceived to use business acumen more than legal expertise. - This is in fact a con, lawyers losing their objectivity. Is there any evidence that lawyers being paid by the hours work less conscientiously? - Again this is a con as a direct financial interest may adversely impact on a lawyer performing his ethical obligations to the profession, court, etc. - It depends on the lawyers and circumstances.	

9. *	The success fee encourages lawyers to pursue claims.	- Depends on the definition of 'success'. May encourage quick settlement at low level. - The attitude of the lawyer would alter in accordance with the strength of the case. - Not if success fee is capped at a reasonable level. - Payment by the hours is good enough incentive. - Lawyers can increase the basis upon which the success fee is calculated by protracting the case.	
10. *	The success fee encourages lawyers to maximize potential recovery.	- Again, depends on the definition of 'success' in the agreement. - The attitude of the lawyer would alter in accordance with the strength of the case. - Not so, CFA does not pay lawyers a percentage of the recovered amount. - It does the reverse. It encourages lawyers to get only as far as needed for "success" and then stop.	

11. *	The success fee encourages lawyers to complete the claims as soon as possible.	- Is there really any evidence suggesting that lawyers paid by the hours always delay cases? - The attitude of the lawyer would alter in accordance with the strength of the case.	

LAWYERS

DISADVANTAGES:

Financial:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
1. *	The system increases the financial burden of lawyers, especially the small firms:		

	(i) *	Much complication will be introduced into the current litigation system for very uncertain benefits. The preparation of CFAs, the need to explain the details to clients and potential clients, disputes arising from CFAs, the need to negotiate corresponding agreements with experts and counsel all add significantly to the administrative costs of lawyers.	- Yes, if we have CFA system. But if we just had conditional fees without insurance cover, it would be much simpler. - CFAs should be an allowable alternative; not mandatory. - The public could be educated by the publication of pamphlets, explanatory workshops to be conducted in conjunction with the Consumer Council etc. - Not agree there will be 'uncertain benefits'. There are ways to simplify the administration of CFAs which can remove some of the complications.	

	(ii) *	Lawyers cannot be paid during the course of litigation. No interim billing for fees and (possibly) disbursements.	- What if a. Judgment on liability? b. Interim payment awarded against the losing party? - some arrangements do allow interim billing. - But legal aid clients cannot afford interim billing. The insurance companies have the bargaining power to negotiate successfully with lawyers not to bill them intermittently. So the only type of clients who will pay interim bills are "Tai-Tai" type of clients. - Thus we must ensure interim bills for disbursements can be rendered. - Depends on the contents of any 'standard' CFA the Law Society would promulgate, recommend or make mandatory.	

	(iii) *	Lawyers become bankers for their clients by paying court fees, expert fees and other expenses.	- Not if clients are required to be responsible for such disbursements. - Depends on the contents of any 'standard' CFA the Law Society would promulgate, recommend or make mandatory. - For consideration, what about 'money on account of disbursements' made a condition precedent to CFAs?	
	(iv) *	Lawyers bear the risks of litigation for their clients. It is unlikely that a position could be agreed whereby a base fee at cost is allowed upon failure and an uplifted fee allowed upon success. The best that could be expected would be disbursements only upon failure. That seems to be the situation in England and Wales.	- Why not a base fee upon failure? - Why not learn from the English experience and not have the same here? - Surely the situation in England and Wales is for reference only. - Tax deductible. - (N.B.: the system in England and Wales does allow: - no win, no fee with success fee if win. - no win, reduced fee with success fee if win. - normal fees if win and nothing if lose. - normal fees if win and reduced fee if lose. Therefore base fees are possible).	

	(v) *	Conditional fees system may lead to abolition of legal aid for the majority of claims. Firms relying on legal aid work will run at a loss in the first years if it is replaced by conditional fees due to the need for funding on-going litigation.	- That depends on government policy. - Doubt whether it will lead to legal aid claimants being able to use CFAs if insurance is required. - Can we explore if we can work this out without insurance. No insurance is required at present. - Members of the profession as taxpayers and constituents could (and should) make their view/preference known that legal aid and CFAs should co-exist: to different sectors of the community.	
	(vi) *	The risk of abuse of the system by insurance companies and other bulk suppliers of work who do not need the lawyers to fund their litigation.	- Only if CFAs are made available to bulk suppliers of work. Could be limited to individuals. - CFAs to be made available only to natural persons. - Global fee arrangements have happened under the English system. - One interesting observation is that if CFAs are implemented, the Legal Aid Department will be able to use them.	

*	Lawyers undertaking CFAs must manage their finance much more carefully. For the reasons set out above, lawyers take on extra burden on their costs. Those succeeding in doing so will incur additional management costs. Those failing may go bankrupt.	- A keen observation. - Agree with the first sentence, the rest of the paragraph is putting the matter too strongly.	
2. *	Introduction of CFAs has not done away with the no-win-no-pay recovery agents. They still prosper in England. These companies find their livelihood in providing finance for ATE insurance premium and underwriting disbursements.	- Not if we work out a scheme without insurance. - Perhaps energy of the profession should be spent in bettering itself rather than wasting it on imposter - like wannabes.	
3. *	Any agreement the lawyer makes with the client for a success fee uplift may be reviewed by the Courts at the end of the case.	- Not if success is defined and cannot be reviewed by court. - Need clear guidelines. - Regulation to be put in place whereby agreement between lawyers and clients not to be overridden except for obvious injustice etc.	
4. *	There is no certainty what percentage of success fee will be allowed. Added to the uncertainty is what will be allowed as taxed costs. Under the SLAS, a legally aided plaintiff who is successful pays 12% of the compensation awarded into the Fund.	- Or 6% if case settled before delivery of brief. - Thus we need to set up the success fee similar to the SLAS. - Situation to be improved by implementing result of careful technical analysis of the Law Society.	

Ethics:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
5. *	The increase in lawyers' commitment may be matched by a lesser commitment on the part of the litigants. CFAs may encourage litigants and lawyers to bring nuisance or unmeritorious claims with the aim of coercing the defendants into a settlement and to earn a conditional fee.	- 1. Unlikely. - 2. Loser pays. - Will happen if CFAs take away all the risks - and litigants have absolutely nothing to lose. See suggestion on compulsory money on account earlier. - Not if proper guideline is set. - This is already happening under the present system.	

6. *	Direct interest in the outcome of litigation may encourage lawyers to indulge in undesirable practices to enhance the chance of success of litigation e.g. coaching witnesses and withholding damaging information. On the other hand, with a strong claim, the lawyer is motivated by success fees to fight on through the trial rather than to settle for a reasonable sum which would satisfy the client.	- Even more so if contingency fees. - Are the acts mentioned in the first sentence lawyer-like at all? - Not if proper guideline is set. - Whether we have CFAs, the situation described in the first sentence happens anyway. - Don't agree with the second sentence. If the payment into court mechanism is not changed, no plaintiff lawyers will dare to push to trial in face of a reasonable payment in. The problem, rather, arises when the client becomes unrealistic and pushes the case to trial despite a reasonable payment in. Who is going to bear the consequences of failing to beat a payment in? The lawyer or the client? What if the client's damages is not big enough to absorb the consequences? What about the ATE insurer? Does he have a say whether to accept the payment in?	

7. *	Lawyers start to judge whether a step in an action is appropriate or not by the fee economics rather than the legal issues or client's interests.	- Undesirable! The ultimate decision, whether or not based on commercial considerations, should be made by litigant - under advice from lawyer!	
8. *	To the extent CFAs will result in increase in litigation, lawyers behaving less ethically and nuisance claims being pursued (and perhaps encouraged) by lawyers, they may adversely affect the image of the profession, even leading to the forming of a perception of lawyers similar to that which is in the U.S.	- No reason to suppose this will result. More likely with contingency fee. - But unlikely to happen in the light of the English experience. It won't develop into the US scenario because the system is so different: long history of contingency fee, jury awards, no 'loser pay' and 'indemnity rule', financiers for litigation … We don't have these. - The prestige enjoyed by lawyers has been the subject of much attack - and if this study is not continued, and the results made known, the attack would be the study had been halted/suspended in the interests of lawyers! Accordingly, it is suggested that CFAs be permitted (subject to stringent conditions) as an alternative so that litigants can be given a choice.	

9. *	Availability of contingency/conditional fees encourages pushy advertising and ambulance chasing.	- Which also helps to advise people of their legal rights. - Not necessarily encourage ambulance chasing. - This can easily be controlled by appropriate code of conduct. It is a different issue. - Those prone to pushy advertising will find a way, no matter what!	
Practical problems in the conduct of litigation:		**Comments made by members of the Working Party:**	**Comments made by the general membership:**
10. *	Creation of expectation on the part of litigants that litigation will be conducted on a no-win-no-fee basis with guaranteed recovery of success fees and ATE insurance premiums.	- Not if litigants are given full picture of ultimate risk of failure - bankruptcy order for costs? Especially if availability of ATE insurance not the concern for the time being. - Not if they are told in advance not to have such expectation. - There will have to be a mass education process to educate the public on CFAs.	
11. *	Problems will arise if the lawyer and the client hold different views on settlement e.g. if client wants to accept a low offer, the final decision rests with him. On the other hand, the client may not accept a fair and reasonable offer, even though there is a risk of losing in the trial and not being able to beat the payment into court.	- 1. Change of lawyers. - 2. Touting by other lawyers for lower success fee. - This is not that different from the situation at present.	

12. *	As the lawyers will only be paid if the case is successful, "success" must be defined at the beginning of the case. This may be difficult in anything other than simple litigation. If the lawyer is acting for a claimant who wants $1M and he is awarded $100,000 is that success? Conversely for a defendant. In commercial litigation the merits often only appear after discovery or experts' reports.	- Hence, the importance of the contents of the Hong Kong Law Society's standard CFA in which 'success' should be defined and that such definition to apply unless agreed to by the client and lawyer etc.	
13. *	The difficulty or chances of success may not be readily ascertainable at the beginning of a case.	- CFAs permissible after commencement of action? - CFAs after writ. - This explains why CFAs tend to be used in the smaller and simpler cases.	

14. *	Lawyers would be placed in a difficult position if Counsel did not also agree to work on a conditional basis as the client would not expect to pay Counsel's fees on an interim basis.	- 1. Covered by CFAs. - 2. Higher rights of audience. - 3. 2 Bars. - But we are fighting for rights of audience. - The statement is true but there must be a way out. - CFAs to be valid upon endorsement by advocate. That is, barrister's prior knowledge equals to endorsement of CFA arrangement. - The point applies not just to counsel but also experts and other parties (e.g. translator) involved in the litigation. Once the gate is open, lawyers, or at least a good portion of us, would be pressured to bear the financing costs of all these disbursements and the risk of eventually not being able to recover the same from the opponents.	

15.	CFAs lead to escalation in cost. Claimant enters a cost-free and risk-free zone with no financial incentive to accept reasonable offers or payments into court.	- 1. Loser pays success fee. - 2. can affect action of defendant in making offers. - CFAs lead to escalation of costs because of insurance and success fees. - The second sentence is true only if there is insurance on both sides. - Not if a proper scheme is worked out. - 'unreasonable' litigants would be discouraged by standard term in CFAs making compulsory deposit of money on account of disbursements a condition precedent to CFA.	