

**Limited Scope Retainers:
Ethical and Practical Issues**

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Introduction

In Canada, we prize the rule of law and the role of lawyers, as an independently regulated profession, in upholding the rule of law. Yet many citizens cannot afford to access the justice system in a meaningful way, as they cannot afford legal counsel. Limited scope retainers have been identified as one solution to increase access to justice by making legal services accessible to those who can't afford lawyers on a full retainer, yet do not qualify for pro bono assistance. In addition, it is the right of every individual to appear on his or her own behalf, and many clients simply do not want to hire lawyers, even if they may have the means to do so.

On October 3, 2013, the Benchers of the Law Society of Alberta passed amendments to the *Code of Conduct*, creating new rules specifically designed to encourage Alberta lawyers to engage in limited scope retainers. The changes to the *Code* are minor – the real work lies in educating lawyers about how to offer limited scope services, both ethically and professionally.

Lawyers have been offering limited scope retainers, or “LSR’s”, for years. They are particularly prevalent in transactional work where, for example, in-house corporate counsel may perform some of the work and use outside counsel for discrete tasks. Alternatively, they use a number of outside firms for different aspects of the work.

Limited scope retainers are good for clients, as they can control their legal matters and the associated costs. They are also good for lawyers, in that lawyers may have an opportunity to serve clients who might not otherwise have consulted a lawyer. Think about how many clients you might otherwise turn away because they cannot afford a full retainer. In many cases, limited scope retainers may become full retainers. Generally speaking, lawyers have fewer problems with accounts receivable as services are paid for at the time they are provided.

The purpose of this paper is to identify the ethical issues and requirements lawyers face when engaged in LSR's, as well as to provide helpful guidance regarding practice and risk management issues.

“New” Ethical Requirements – Code of Conduct Amendments

Our former *Code of Professional Conduct* and new *Code of Conduct* contemplated LSR’s in commentary. Commentary to the competence rule in Rule 2.01(2), prior to the recent amendments, stated:

A lawyer must balance the obligation to be thorough with the obligation to be economical. While it is ethically improper to spend a client's money foolishly or unnecessarily, it is also unacceptable to curtail the scope of services in an effort to minimize legal fees when to do so would compromise the lawyer's standard of competence. A lawyer must therefore carefully assess in each case in which a client desires abbreviated or partial services whether, under the circumstances, it is possible to render those services in a competent manner. It may be permissible, for example, to prepare and register a non-arm's length transfer of land without attending to closing or the handling of funds, provided that the client understands and accepts the risks involved. It may not be permissible to prepare an abbreviated or simplified contract which, when viewed objectively, is incomplete or insufficient to protect the client's interests. In this case, if the client is not willing to pay the costs of an adequately detailed document, the lawyer must withdraw or provide complete services for less than an amount that fairly compensates the lawyer.

In circumstances in which abbreviated or partial services may be rendered competently, the client must be fully apprised of the risks and limitations of the retainer. Discussions with the client in this regard must be confirmed in writing.

This commentary was carried over in 2011 from our former *Code*, as the Federation of Law Societies of Canada did not previously contemplate LSR’s in the Model Code of Conduct, on which our 2011 *Code* is based. We have contemplated LSR’s in Alberta for many years and we did not want to lose this valuable commentary.

In September 2011, the Law Society of Upper Canada introduced amendments to its ethical code, dealing with LSR’s. A summary of the changes and a link to the discussion paper may be found on LSUC’s website at <http://www.lsuc.on.ca/unbundling/>. Of interest is the conscious choice made by LSUC to avoid using the term “limited legal services”; it was thought that the term would suggest to some that less than competent service was being provided.

LSUC’s new rules dealt with the lawyer’s obligation to render competent service, the requirement of a written retainer and clear client communication, and the management of communication with an opposing party who has engaged a lawyer for only a limited purpose. The Federation of Law Societies followed suit in 2012, and approved similar changes to the Model Code last December. The