



50 YEARS
OF EXCELLENCE
IN ADVOCACY

The Advocates' Society

PROMOTING EXCELLENCE IN ADVOCACY

PRESIDENT: Peter J. Lukasiewicz

Tel: (416) 862-4328 • peter.lukasiewicz@gowlings.com

January 30, 2015

Ms. Chantelle Bowers
Secretary to the Federal Courts Rules Committee
Federal Court of Appeal
90 Sparks Street
Ottawa, ON
K1A 0H9

Dear Ms. Bowers,

RE: Limited Scope Representation (“LSR”)

The Advocates' Society (the “Society”) submits the following remarks in response to the request of the Rules Committee for comment in regard to the discussion paper circulated by the sub-committee on the unbundling of legal services. The Society speaks on behalf of litigation lawyers from across the country. With more than 5,000 members, the Society reflects diverse and considered views of the litigation bar. Our membership includes counsel who act before the Federal Court and the Federal Court of Appeal on a variety of matters.

We note that your discussion paper annexes the Society's letter of January 18, 2011, addressed to the Professional Regulation Committee of the Law Society of Upper Canada. That correspondence sets out the Society's views in regard to the amendments to the Rules of Professional Conduct which were then under consideration and, more generally, our views as to the issues associated with “unbundling” of legal services.

As is noted in the fourth paragraph of that letter, the Society recognizes that the high cost of legal services and underfunding of legal aid, along with the wide availability of legal information on the internet has led to record numbers of self represented litigants entering the system and that such individuals increasingly need and require access to limited scope retainers, which have the potential to greatly enhance the individual's access to justice.

On the specific issues raised by the discussion paper, we would respond as follows, dealing with each issue in the order set out in the paper.

General

In our view the Federal Courts Rules should be amended to support limited scope representation, and this could reasonably include representation of “mom and pop” corporations in which there are, for example, only one or two shareholders who also serve as directors. It is our understanding that the jurisprudence in general supports the notion that in such circumstances it may on occasion be appropriate for such a corporation to act through its officers, rather than by counsel.

An LSR Form

The Society is of the view that a standardized form for notifying the Court would be appropriate and such a form should specify the scope or mandate of the representation in general terms, and should include the contact information of the party and the lawyer, in order that opposing counsel and the Court may readily make contact for purposes of the proceedings, within the scope of the LSR. The form should for that reason specify the addressee for communications from opposing counsel, to avoid confusion or misunderstandings which may serve to delay the proceedings and increase its cost. It is not necessary, we feel, that the party sign to acknowledge the arrangements made with counsel. Since the Rules already place an obligation on the parties to update their address for service, in our view the form need not address that.

Appearances and Court Documents

The Society is of the view that there should not be a requirement that documents drafted by a lawyer on an LSR basis identify the lawyer, where the document is signed by the party. If the arrangement between the lawyer and the client provides for the services to be limited to drafting, with the client otherwise representing themselves, there is, in our view, no reason to identify the lawyer. To identify the lawyer would tend to encourage the opposing counsel or party to make contact with that counsel, and would potentially frustrate the arrangements made under the LSR agreement.

Where a lawyer on an LSR intends to appear before the court, in our view the lawyer should be required to provide advance notice of that. There may, however, be a need for an exception in the case of immigration proceedings, where the obligation to provide advance notice should not arise until after it is known that leave has been granted by the Court.

Terminating LSRs

In our view, a lawyer acting on an LSR should be required to notify the Court of the termination of the representation where that lawyer has been identified to the Court and opposing counsel as acting on the client's behalf. Such notice could, however, be adequately conveyed by letter addressed to the registrar, without the need for any more formal process. It would appear reasonable that service be made on the lawyer in such a circumstance until notice has been given as indicated above.

Successive LSRs

The Society does not favour the institution of any presumptive limit on the number of successive LSRs in a proceeding as the circumstances of any particular case, and those of the individuals involved, should be considered in determining whether any reason exists to justify the denial of access to such representation.

We would be pleased to discuss these submissions with you further. In that regard, please contact Dave Mollica, Director of Policy and Practice, at (416) 597-0243, ext. 125, or dave@advocates.ca.

Yours very truly,

A handwritten signature in black ink, appearing to read "Peter J. Lukasiewicz". The signature is fluid and cursive, with a large initial "P" and "L".

Peter J. Lukasiewicz
President

C: Dave Mollica, Director of Policy and Practice