



Providing for Limited Scope Representation in the Federal Court and the Federal Court of Appeal

A DISCUSSION PAPER OF THE SUB-COMMITTEE ON THE UNBUNDLING OF LEGAL SERVICES

To increase the affordability of legal services, some jurisdictions have taken steps to facilitate the “unbundling” of legal services. As a result, in contentious matters, lawyers may be retained to provide specified services and are not assumed by regulators and courts to be responsible for the full range of advice and representation that may otherwise be required in a proceeding.

The “unbundling” of legal services, and the consequent “limited scope retainers” raise a number of questions in respect of the regulation of the lawyer-client relationship that are not directly of concern to the courts. Accordingly, such questions are not within the mandate of the Federal Courts Rules Committee.

However, certain questions are pertinent to the dealings between the courts and party's solicitor where the solicitor has not undertaken the responsibilities of “solicitors of record” in proceedings in which they have been retained by a party. This discussion paper considers the possibility of reforms to the Federal Courts Rules to facilitate “limited scope representation” or “LSR” in the Federal Courts.

The Federal Courts are interested in any initiative that may help self-represented parties. In this context, we welcome your comments with respect to the following questions regarding the possible development of amendments to Rules related to LSR.

For those less familiar with the rules on representation, please refer to the Annex A of this document.

An abundance of papers and references were consulted by the subcommittee. Annex B provides a sample of references in various jurisdictions.

General

1. Should the Federal Courts Rules be amended to support limited scope representation (LSR)?

If so, should LSR be permitted in the representation of corporations as well as individuals?

An 'LSR Form'?

2. Should there be a standardized form for notifying the court of an LSR and, if so, what should it include?

Should the form specify the scope or mandate of the representation?

Should the form contain a signed acknowledgement by the party?

Should the form include the contact information of the party and the solicitor?

Should the party be required to update the party's contact details?

Should the form specify the addressee for communications from opposing counsel?

Appearances and Other Court Documents

3. Should appearances and other Court documents drafted by a solicitor serving on an LSR be required to so indicate even if the document is signed by the party?

Should the solicitor be identified?

Should the solicitor's contact details be provided?

Should the scope of the LSR be specified?

4. Should a solicitor appearing in court on an LSR be required to provide advance notice of or should the solicitor be permitted to provide notice at the hearing?

Terminating LSRs

5. Should an LSR terminate upon completion of the specified mandate, or should the solicitor be required to notify the court of the termination of the representation?

Should the obligation to serve a solicitor who is acting on an LSR be limited to the specified mandate of the LSR or should it continue until notification of the termination of the LSR?

Should the party be required to sign a notice of termination of the LSR?

Should a solicitor seeking to terminate an LSR before its completion be required to obtain leave to do so?

Successive LSRs in a Proceeding

6. Should there be a presumptive limit on the number of successive LSRs permitted in a proceeding?

Final Thoughts

7. Do you have particular recommendations as to which Rules should be amended?

8. Do you have further comments to make about the regulation or documentation of LSRs?

Your comments are appreciated and will be considered by the Federal Courts Rules Committee to determine if changes will be made to the Federal Courts Rules and, if so, the scope of changes. To make written comments, please email or write by February 15, 2015 to:

Ms. Chantelle Bowers
Secretary to the Federal Courts Rules Committee
Federal Court of Appeal
90 Sparks Street
Ottawa, ON K1A 0H9
Chantelle.Bowers@fca-caf.gc.ca

ANNEX A

RELEVANT PROVISIONS OF THE RULES ON REPRESENTATION

Individuals

119. Subject to rule 121, an individual may act in person or be represented by a solicitor in a proceeding.

Corporations or unincorporated associations

120. A corporation, partnership or unincorporated association shall be represented by a solicitor in all proceedings, unless the Court in special circumstances grants leave to it to be represented by an officer, partner or member, as the case may be.

Parties under legal disability or acting in representative capacity

121. Unless the Court in special circumstances orders otherwise, a party who is under a legal disability or who acts or seeks to act in a representative capacity, including in a representative proceeding or a class proceeding, shall be represented by a solicitor.

Deemed solicitor of record

123. Where a party takes a step in a proceeding by filing or serving a document signed by a solicitor, that solicitor is the solicitor of record for the party.

Notice of change or removal of solicitor

124. A party may change or remove its solicitor of record or appoint a solicitor of record by serving and filing a notice in Form 124A, 124B or 124C, as the case may be.

Motion for removal of solicitor of record

125. (1) Where a solicitor of record ceases to act for a party and the party has not changed its solicitor of record in accordance with rule 124, the Court may, on a motion of the solicitor, order that the solicitor be removed from the record.

Manner of service

(2) A notice of motion under subsection (1) shall be served on the party formerly represented by the solicitor

(a) by personal service; or

(b) where personal service cannot practicably be effected,

(i) by mailing the notice of motion to the party at the party's last known address, or

(ii) if no mailing address of the party is known, by depositing the notice of motion at the Registry office where the proceeding was initiated.

Order to be served

(3) An order made under subsection (1) removing a solicitor of record of a party shall be served on the party in the manner set out in subsection (2) and on all other parties to the proceeding.

Proof of service

(4) An order under subsection (1) does not take effect until proof of its service has been filed.

ANNEX B

Ontario Regulation 231/13 made under the Court of Justice Act Amending Reg. 194 of R.R.O. 1990 (Rules of Civil Procedure). In force January 1, 2014. (<http://www.fca-caf.gc.ca/fca-caf/pdf/Ontario%20Rules%20of%20Civil%20Procedure.pdf>)

Alberta Rules of Court. In force November 1, 2010. (<http://www.fca-caf.gc.ca/fca-caf/pdf/Limited%20Scope%20Retainers%20in%20the%20Alberta%20Rules%20of%20Court.pdf>)

Unbundling Legal Services in 2014: Recommendations for the Courts, Author: Mosten, Forrest ([http://www.fca-caf.gc.ca/fca-caf/pdf/Unbundling%20Legal%20Services%20in%202014%20Recommendations%20for%20the%20Courts%20\(Author%20-%20Forrest%20Mosten\).pdf](http://www.fca-caf.gc.ca/fca-caf/pdf/Unbundling%20Legal%20Services%20in%202014%20Recommendations%20for%20the%20Courts%20(Author%20-%20Forrest%20Mosten).pdf))

Lawyer's Guide to Limited Scope Representation, published by the Bar of Montreal. 2011. (<http://www.fca-caf.gc.ca/fca-caf/pdf/A%20Lawyer's%20Guide%20to%20Limited%20Scope%20Representation%20-%20Mtl%20Bar.pdf>)

Letter from the Advocates Society - « Unbundling of Legal Services and Limited Legal Representation », January 18, 2011. (<http://www.fca-caf.gc.ca/fca-caf/pdf/Unbundling%20letter-Advocates%20Society.pdf>)