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# THE ADVISORY

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Law Society Honors First Woman to Reach 50 Year Milestone at Long Service Awards Ceremony in Edmonton – Page 10



## ETHICALLY SPEAKING

# The Ethics of Limited Scope Retainers

By Nancy Carruthers, Practice Advisor, Law Society of Alberta

ALBERTA LAWYERS have been engaged in limited scope retainers for years, perhaps without knowing it. For example, when the wrongfully dismissed employee calls to ask if the settlement being offered by his employer is fair, your advice to “take it and run” is really a form of limited retainer.

Limited scope retainers are also known as unbundled legal services, limited representations, and limited retainers. This type of retainer involves a lawyer providing representation for only part of a legal matter, without the expectation that the lawyer will provide a full-service representation. Limited retainers make it more affordable for people to access legal services. Clients can obtain advice about their basic rights, and can also receive assistance with drafting documents and preparing for court appearances and mediation, when they intend to self-represent. Lawyers may also appear in court on the client’s behalf, for discrete aspects of a case, without becoming the lawyer of record.

Rule 2.27 of the new Rules of Court provides that self-represented litigants may retain lawyers for a particular purpose. The lawyer must inform the court of the limited nature of the appearance, either orally, at the time of the appearance, or in writing, prior to the appearance. If a lawyer fails to clarify the limited basis on which he or she is attending, presumably that lawyer runs the risk of being considered the lawyer of record for the entirety of the matter.

Limited scope retainers are certainly permitted, even contemplated, in our rules of professional conduct. The new Alberta Code of Conduct states as follows, in the commentary to Rule 2.01(2):

*A lawyer should clearly specify the facts, circumstances and assumptions on which an opinion is based, particularly when the circumstances do not justify an exhaustive investigation and the resultant expense to the client. However, unless the client instructs otherwise, the lawyer should investigate the matter in sufficient detail to be able to express an opinion rather than mere comments with many qualifications.*

*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.*

There are a number of ethical and practical concerns associated with the delivery of limited scope legal services. For example, what is the standard of service the client should be entitled to expect from the lawyer? If dealing with a self-represented party who has a lawyer on a limited retainer, when can you speak directly with the opposing party and when are you obliged to communicate with counsel? Are there particular matters or clients which simply are not appropriate for a limited retainer?

The Law Society of Upper Canada recently revised its Rules of Professional Conduct to deal more specifically with limited scope retainers. Some of the issues addressed in the new LSUC rules may be perceived as practice advice rather than ethical guidelines. Some practical matters addressed in the LSUC revisions include the following:

- the advice required from the lawyer about the nature and extent of the services;
- the requirement of written confirmation when acting pursuant to a limited scope retainer;
- guidance with regard to when a lawyer may communicate with an otherwise self-repre-

sented party who has retained a lawyer for a limited purpose.

In Ontario, a lawyer providing legal services under a limited scope retainer is required to assess whether it is possible to render those services competently, considering the degree of skill and preparation which may be required. Further, a lawyer who is asked to provide limited scope legal services to a client under a disability should consider if it is even possible to act on a limited retainer.

In the absence of procedural guidelines in the Rules of Court or Alberta’s Code of Conduct, Alberta lawyers should endeavor to clarify when opposing counsel may contact a self-represented party who is represented only for a limited purpose or issue. Service issues should also be contemplated. The Ontario rules, for example, provide that a lawyer may communicate directly with an opposing party unless he/she receives written notice that another lawyer is providing advice under a limited retainer and the communication falls within the scope of that limited retainer. The lawyer may communicate with the opposing party, who is otherwise self-represented, on matters falling outside the scope of such a retainer.

Perhaps of greater concern to lawyers are the risk management issues associated with limited retainers. It may be difficult, for example, to ensure that you are receiving enough information to give competent advice, especially if the client doesn’t seek legal advice until the matter is an emergency. The more limited the retainer, the more important it is to work within your area of knowledge. There may be an obligation to identify additional problems or issues unrelated to the retainer, or to alert the client to the need for further legal assistance. Certain clients may not be ideal candidates for this type of service, if they will not be capable of performing the tasks expected of them due to their own circumstances or the complexity of the matter.

The retainer agreement is of particular significance in these types of retainers, as it makes clear the nature of the retainer and the scope of work which the lawyer and client will each be performing, as well as those matters for which the lawyer is not responsible. Checklists

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# Interest Growing Strong in SoloNet Pilot Project

By Jocelyn Frazer, Equity Ombudsperson, Law Society of Alberta

AS A PILOT PROJECT, Solonet has over a hundred users, with interest still growing in the online network for sole practitioners and lawyers in smaller communities.

SoloNet was launched in mid-July 2011, by the Office of the Practice Advisors as an online forum to enable sole practitioners and lawyers in smaller communities in Alberta to connect and share information.

"I have been able to receive help and suggestions from it as well as reciprocate on occasion," comments Donald P. Kolody of Medicine Hat, Alberta.

"SoloNet feels like being part of a 100-lawyer firm, with all the other lawyers ready, willing and able to provide comments and advice electronically at a moment's notice," observes lawyer John K. J. Campbell. "SoloNet has allowed solo and small firm practitioners to draw on the expertise and resources of many

very skilled and experienced lawyers that they would otherwise not be able to access."

"SoloNet," he adds, "allows the solo and small firm community to share not only technical advice on legal issues but also to share ideas and opinions about general practice issues that are of special importance to those practicing in the solo or small firm environment."

This secure online social network is intended to be an opportunity to share collective professional knowledge and experience, provide a sounding board for lawyers in similar practice settings, and otherwise connect with each other in a closed online environment. Discussion group participants determine the topics for discussion. The contents of the network are confidential to the participants in SoloNet.

The Law Society of Alberta is not responsible for the content on this site, and does not moderate these discussions. An individual

member's participation in SoloNet will be disclosed to all other members of the network.

Lawyer Christina Wallace points out that Solonet enables users to meet "a group of people that you might not otherwise meet to bounce ideas off of. Even if you aren't someone who posts often, you can still benefit." She adds that she has "tried a number of other listservs this past year and Solonet compares very favourably because it has a group of general practitioners who are alive to the issues of a small or solo practice."

It has started as pilot project and is being hosted by the Office of the Practice Advisors. The Law Society of Alberta only provides the online facilities for SoloNet.

For more information, email us at [solonet@lawsociety.ab.ca](mailto:solonet@lawsociety.ab.ca) ❖

## *Ethically Speaking: The Ethics of Limited Scope Retainers continued from page 11...*

are useful tools when identifying the necessary steps and who is responsible for them. When necessary, alert the client to any risks or consequences arising from the limitations of the retainer, and advise of any qualifications to your advice. In some cases, a client who is informed of the risks and limitations may decide to expand the retainer. Use a written retainer agreement containing clear, plain language. Obtain

your client's acceptance of the limited retainer on the terms discussed, and get written acknowledgment from your client that he or she understands and accepts these terms.

There are a number of American resources, offered on the American Bar Association website, which address the issue of retainer agreements and provide precedents. One such paper found on the ABA's website is entitled "Unbundling 101: Expanding Your Practice Using Limited Scope Representation", presented by Sue Talia in 2009. The Law Society of British

Columbia also has a good article on its website, entitled "Managing the Risk of a Limited Retainer". The keys to drafting the retainer and completing the work are clarity and communication, as is the case when handling any client matter.

*View the Alberta Code of Conduct on the Law Society of Alberta website and consider learning more by checking out the Legal Education Society of Alberta educational modules on the LESA website.* ❖

## *A Neutral Corner: Getting Away From It All! continued from page 12...*

- For the duration of your holiday, stop being an A-type personality with a deadline. Let go. Let someone else be in control. Take your watch off. Don't sweat small stuff. Smell roses. Go with the flow. Watch the sunset -- or rain, or whatever gets handed to you.
- If you are particularly anxious about your practice, leave a number where you can be reached, but do not call in. If you call in, it will be too much like "business as usual" for both you and your staff.
- The evolution of technology enables us to stay connected any time, pretty much anywhere, but consider the restorative benefit of a complete break – even just for a short duration. Now commit, prepare and plan, and go and have a good time! ❖

## Counsel Positions Serve the Public Interest and Protect Principles of Justice

Lawyers seeking to make a difference are encouraged to explore two Counsel positions which offer law practitioners an opportunity to serve the public interest and protect the fundamental principles of justice. The Law Society is seeking a Senior Counsel for either its Calgary or Edmonton office, and a Counsel for its Edmonton office.

The Senior Counsel position is responsible for all legal services required by the Law Society, and participates as a member of the executive leadership team which provides management and strategic expertise to the operation of the Law Society. This leadership position reports directly to the Executive Director/CEO. It leads a team of four lawyers and supporting staff, as well as retaining and supervising external counsel, to provide effective and efficient service.

As well, the Law Society seeks an experienced lawyer to join its outstanding counsel team in Edmonton. To read the complete job descriptions please visit [www.lawsociety.ab.ca](http://www.lawsociety.ab.ca). The Law Society values diversity in its workforce and equal access to opportunity. All inquiries and applications will be handled with the highest level of confidentiality. This is an exclusive search. For more information or to apply, contact Sameera Sereda at 403-444-1763.