



February 12 2015

Via email: Chantelle.Bowers@fca-caf.gc.ca

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: Discussion Paper on Providing for Limited Scope Representation in the Federal Court and Federal Court of Appeal**

Thank you for the opportunity to respond to the Federal Courts' Subcommittee on the Unbundling of Legal Services' consultation regarding the role of Limited Scope Retainers (LSRs) and their impact on the functioning of the Federal Courts. The CBA Access to Justice Committee and CBA Ethics and Professional Responsibility Committee have considered the questions posed. Our comments are guided by the discussion of LSRs in the CBA's *Reaching Equal Justice* report (2013), which stresses that LSRs should be embraced when they advance meaningful access to justice, generally when they are provided to capable litigants through an effective relationship between lawyer and client. Subject to this overarching consideration, we offer the following specific comments:

1. LSRs should be permitted for both individuals and corporations as they have the potential to enhance access to justice in the Federal Courts by allowing a party some legal assistance without the incurring the cost of full representation. We are unaware of any reason to permit LSRs for individuals but not corporations. For example, many small corporations appearing in Federal Court, especially on tax issues, struggle to pay the costs of litigation.
2. An LSR form <sup>1</sup>would be useful to clarify when an LSR is solicitor of record for some, but not all, of the issues.
  - a. The form should delineate which issues are within the scope of the LSR and which are the responsibility of the party. They should not require disclosure of information that would offer an advantage to the opposing party or disclosure of privileged information. Both LSR counsel and the party should sign the form to indicate consent to their

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<sup>1</sup> The Montreal Bar report appended to the Discussion Paper in Annex B includes such a form.

- respective roles and to avoid gaps or overlaps in representation. The form should require the contact information for LSR counsel and the party.
- b. Subject to 2.a., the form should not solicit information that would not be required in matters where the lawyer provides full service or where the party is self-represented.
3. When LSR counsel provides a drafting or coaching function only, and is not retained to present argument before the court or communicate with opposing counsel, counsel need not be identified as they will have no relationship with the court. Also, publicizing the lawyer's involvement may lead to contact from the court or opposing counsel, a function that the LSR counsel is not retained to provide.
  4. When LSR counsel intends to appear in court on behalf of a client, the same period of notice should be provided as required when another lawyer from the same firm appears for the solicitor of record. In some jurisdictions this may mean no notice is provided, until the LSR lawyer appears in court.
  5. When an LSR is 'on record' with the court and opposing counsel, notice should be required if representation ceases prior to the end of the mandate set out in the LSR form. LSR counsel seeking to terminate an 'on record' LSR should follow the same procedure as a 'full service' solicitor of record when terminating representation. However, if the mandate is clear, notice should not be required when the mandate ends.
  6. There should be no limit on the successive number of LSRs in a proceeding, unless there is a limit on the successive number of solicitors of record.
  7. Amendment of Rules:
    - a. Rule 119 should allow for solicitors to provide representation on some issues but not the entire case.
    - b. Rule 120 should allow for solicitors to provide representation on some issues but not the entire case and should allow representation by the majority shareholder, or a shareholder or officer nominated by the majority of the shareholders.
    - c. Rule 121 should not change.
    - d. Rule 123 should be amended by adding "to the limits of the solicitor's representation as outlined in the 'LSR form' (where applicable)".
    - e. Rule 124 should be amended by adding "or its LSR solicitor" after both occurrences of the phrase "solicitor of record".
    - f. Rule 125 should be amended by adding "or its LSR solicitor" after all occurrences of the phrase "solicitor of record".

The CBA Committees recognize that LSRs in the Federal Courts, and other Canadian courts, can be one way to enhance access to justice. We appreciate the opportunity to address your preliminary queries and recognize that this topic requires more consideration. We would be pleased to assist further as an approach to LSR in the Federal Courts is developed.

Yours truly,

*(original signed by Gaylene Schellenberg for John H. Sims and Anthony J. Kavanagh)*

John H. Sims, Q.C.  
Chair, Access to Justice Committee

Anthony J. Kavanagh  
Chair, Ethics & Professional Responsibility Committee

cc: Paul M. Harquail  
Chair, Federal Court Bench and Bar Liaison Committee