



May 20, 2014

Via email: ghume@harrisco.com; jstrawcz@flsc.ca

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Dear Mr. Hume and Ms. Wilson:

Re: Short-Term Limited Legal Services

The Canadian Bar Association appreciates the invitation to comment on proposed amendments to the Federation of Law Societies of Canada *Model Code* Rule 3.2.1 and draft Rules 3.4-2B and 3.4-2D (FLSC proposals), with regard to Short-Term Limited Legal Services. We commented previously, in letters dated January 22, 2014 and April 7, 2014, on the other proposed amendments to the FLSC *Model Code* set out in your memo of October 29, 2013.

The CBA Access to Justice Committee has considered the FLSC proposals in the context of its recent *Reaching Equal Justice* report¹ and consulted with the CBA's Ethics and Professional Responsibility Committee in developing these comments. We recognize the problem that the FLSC proposals are intended to address, specifically limited access to summary advice services as part of the larger pressing problem of the public's unmet legal needs.

Adopting the vision in the *Reaching Equal Justice* report, the CBA believes that an inclusive justice system must be based on people's needs, rather than the needs of justice institutions or professionals. The justice system belongs to, and is intended to serve the public. At the same time, all members of the justice community, including lawyers, should contribute to achieving this vision of equal access to justice.

In many smaller centers in Canada, and especially in the area of family law, lawyers' ability to provide pro bono legal advice without the concern of conflicts is critical. It is the main issue that puts a 'chill' on doing pro bono work in those communities. While the profession's charitable contributions are not the ultimate answer for achieving equal justice, we know that, right now, the

¹ See, Access to Justice Committee, *Reaching Equal Justice* (Ottawa: CBA, 2013) at www.cba.org/CBA/equaljustice/secure_pdf/EqualJusticeFinalReport-eng.pdf

public requires this service and many lawyers are prepared to provide it. Indeed, the CBA champions that each lawyer should strive to provide 50 hours of pro bono service each year.

We have two specific concerns with FLSC proposals:

1. The term “short-term limited legal services” may be confused with “limited scope retainers”, which raises different though related issues. It is unclear what is intended by “short-term limited legal services”, both in duration and the substance of the services it includes. Clarifying that these are summary services provided without a retainer may address this issue.
2. The proposals do not give enough structure and clarity for lawyers to know that the conflicts issue will be satisfied if they follow the Rules.

The proposals are intended to allow lawyers to participate in legal advice clinics, act as duty counsel and provide legal information and advice seminars without the risk that another member of their firm will lose a paid client file because of a conflict. The Law Society of Alberta’s Rule says that “adequate” measures must be taken to prevent disclosure from the pro bono lawyer to another lawyer in their firm in such a situation, providing specific examples of those measures. The FLSC draft Rule 3.4-2D instead refers to “reasonable” measures. If this distinction is deliberate, it would be helpful for the FLSC to also outline what constitutes reasonable measures, as draft Rule 3.4-1 does not allow lawyers to act where there is a conflict “except as permitted under this Code”.

We also suggest that the FLSC Commentary [3] be included as part of the actual Rule, instead of as Commentary. A defined Rule of Professional Conduct will give added certainty that volunteer or not-for-profit services can be provided without the risk of being challenged for conflict.

Finally, we note the proposed obligation on lawyers to tell clients in short-term limited legal service situations when they should seek further help. This is commendable, but may leave many clients wondering where to go for that help and how to afford it. We suggest that lawyers be encouraged to have referrals on hand (if available), so people can be redirected immediately to the best resource for their situation.

Thank you for considering these suggestions. We appreciate the opportunity to provide our input and encourage the FLSC to undertake broad consultation on these and any other proposed revisions to the FLSC *Model Code*.

Yours truly,

(original signed by Gaylene Schellenberg for John Sims)

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