

EnBref

# BRIEFLY *speaking*



Eye on Privacy



L'ASSOCIATION DU  
BARREAU DE L'ONTARIO  
Une division de l'Association  
du Barreau canadien

ONTARIO  
BAR ASSOCIATION  
A Branch of the  
Canadian Bar Association

P7/26  
P 1(Y)

PM#40069139  
R. Ian Mitchell  
WeirFoulds LLP  
1600-130 KING ST W  
PO BOX 480 THE EXCHANGE TOWER  
TORONTO ON M5X 1J5



# “Unbundle” Me!

## Amendments Proposed by LSUC to the Rules of Professional Conduct

John O’Sullivan

On October 8th, 2010 the Law Society of Upper Canada (LSUC) wrote to the OBA asking for input on certain changes to the Rules of Professional Conduct (RPC) being proposed by the LSUC, to address the issue of limited scope retainers. Limited scope retainers are agreements between a lawyer and client, under which the lawyer provides services for part, but not all, of a client’s legal matter.

The proposed changes include: the requirement for candid advice as to the nature, extent and scope of the services being provided by the lawyer; the requirement to provide a written copy of the agreement between lawyer and client; and rules concerning a lawyer’s communications with a person who is receiving limited legal service representation.

Two other amendments—a mechanism for deeming withdrawal of representation by a lawyer, and a requirement of disclosure to the tribunal and opposing counsel of the scope of a limited scope retainer—were included for comment, but are not being considered for adoption at present.

The OBA prepared written submissions on the proposed changes which were submitted on January 20th, 2011. The full text of these submissions is available on the OBA website.

The matter will be reported to Convocation later this year.

### The OBA’s Position

The OBA’s position, formulated by members of more than a dozen practice area sections, is that as limited-scope retainers are a long-standing reality in the corporate context and an emerging reality in the litigation, administrative and family law contexts, it is appropriate for the RPC and Commentaries to address the issues that limited scope retainers give rise to.

First and foremost, the RPC changes and limited-scope services generally, should, promote increased access to justice.

In particular:

- (a) The recognition of limited-scope services in the RPC should not be seen as an alternative to continued efforts to provide

financial assistance for vulnerable clients and to make the justice system more affordable;

- (b) Vulnerable clients must be protected by a requirement that the client is given a clear explanation of the limits on the service that will be provided. In addition, services must not be limited inappropriately such that there is little or no value to the service provided;
- (c) Changes to the RPC must not add unnecessarily to the time and expense of a matter or adversely impact services. For example, the proposed requirement for a written agreement when a lawyer renders limited-scope advice, would render the provision of duty counsel or legal clinic services virtually impossible;
- (d) In the litigation, administrative and family law contexts, changes to the RPC alone are not sufficient. Corresponding changes to the rules of practice (both in courts and tribunals) and changes to the law of negligence are also necessary;
- (e) While guidance from the RPC is helpful, the lawyer’s professionalism must ultimately be relied on for determining what advice is appropriate concerning limited service retainers. It must be clear there is no retreat from the rule that a client is entitled to the undivided loyalty of the lawyer.
- (f) Education undertaken by LawPro, the Law Society and others would assist the profession in complying with its obligations when giving limited-scope advice.

### Future implications for the profession

If the proposed amendments are adopted in the form recommended by the OBA, lawyers will have helpful formal guidance from the LSUC on the practical issues that limited service retainers give rise to. This guidance will inform the standard of care expected of lawyers. And it will make life easier for Ontario’s lawyers.

*John O’Sullivan co-chaired, along with Morris Chochla, the OBA’s Limited Scope Legal Services Working Group. He is a partner with Weir Foulds LLP in Toronto.*