The Law Society of Manitoba

INCORPORATED 1877 | INCORPORÉ EN 1877

RETAINERS

Practice Management Fundamentals

December 4, 2019

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A. INTRODUCTION

The module on Retainers describes the nature and purpose of retainer agreements, the nature and requirements for contingency fee agreements, joint retainers and limited scope retainers and the requirements related to giving independent legal advice, and witnessing a signature under the Real Property Act s. *72.5(1)* for a transfer of land or under s. *72.7(1)* for a mortgage.

We encourage you to always confirm the detailed terms of your retainer in writing with your client when you open the file and whenever your client's instructions change.

Although we aim to present a comprehensive module, this module is not exhaustive. This module is not a substitute for exercising professional judgment and does not constitute legal advice.

This module was last updated in December 2019.

As you read through this module on Retainers, if you find any information that is unclear, inaccurate or outdated, please send an email with details to *cpd@lawsociety.mb.ca*.

1. Objectives

After reading this module on retainers, you will be able to:

1. **Define a retainer agreement; identify why a retainer agreement is necessary and what terms it should contain;**
2. **State the specific requirements for certain types of retainers;**
3. **Identify a legal service that could be the subject of a limited scope retainer;**
4. **Know where to find relevant legislation about contingency, joint and limited scope retainer agreements;**
5. **Describe your obligations when witnessing a transfer or a mortgage;**
6. **Draft a retainer agreement for your practice.**

2. The Module in a Nutshell*

Retainer Agreements in a Nutshell

1. You must know and understand specific money retainers, general money retainers, contingency fee agreements, limited scope retainers, when a client becomes a client, non-engagement letters and general retainer agreements.

2. **It is good practice to have a written retainer agreement signed by every client on every new matter as a record of the contract between you and the client.**

3. It is a good business practice to require every potential client to pay you a money retainer or deposit toward fees before you open a file or begin any work for that client.

4. A basic retainer agreement can be standardized so you don't forget to inform your client of your standard firm practices regarding general communication, fees and legal services. See the checklists, the samples and the sections on content.

5. If you are thinking of providing legal services for a potential client on a contingency basis, or on a general money retainer from an institutional client, or on a joint retainer, or on a limited scope retainer, there are special rules and specific guidelines that apply to those type of retainers. You must follow those rules, so read them before drafting those retainer letters, or doing the work.

6. Giving independent legal advice (ILA) is a special retainer with its own guidelines. See the section on ILA.

7. The Real Property Act requires a lawyer to witness a signature for a transfer of land (s. 72.5) or a mortgage (s. 72.7) within Canada, and you have professional obligations in that situation, even if the signatory does not want to retain you for legal services beyond the witnessing of the signatures. See - Witnessing Signatures on a Transfer or a Mortgage.

8. The samples provided are designed to give you suggestions only – always use your own professional judgment when selecting, or using the content in the sample documents in this module. You must adapt them to suit the specific situation in your client's matter.

*The Module in a Nutshell guides in each module are a brief summary of the main messages that we expect you will take away from reading the entire module. Module in a Nutshell Guides sometimes use terms like "every" and "best" for illustration, but there are always circumstances where you will make an exception based on your professional judgement.

B. WHEN IS THE SOLICITOR-CLIENT RELATIONSHIP ESTABLISHED?

When the solicitor-client relationship is created, you enter into a fiduciary position of trust with your client which continues after the end of the retainer, no matter how the relationship ends. Your duty of loyalty to your client is based on that trust.

Your duty of loyalty to the client includes:

a duty of commitment to the client's cause, which means, for example, that you will not summarily and unexpectedly withdraw from representing a client and you will pursue your client's rights, keeping your client's interests ahead of all other interests;

a duty of candour with your client which means, for example, that you must openly share with your client all relevant information in your knowledge; you must not "keep the client in the dark about matters [you know] to be relevant to the retainer": *Strother v 3464920 Canada Inc., 2007 SCC 24 at para. 55.* ;

a duty of confidentiality which means, for example, you cannot use or disclose confidential information concerning the business and affairs of the client acquired in the course of the professional relationship without the client's consent – solicitor–client privilege (also known as legal advice privilege) protects these communications from disclosure without your client's consent;

an obligation to avoid conflicting interests, which means that you must not act or continue to act for a client where there is a conflict of interest except as permitted under the *Code of Professional Conduct (Code*).

When does a person become your client? The question of whether a solicitor client relationship has been created is a question of fact.

In *Zimak v 4244354 Manitoba Ltd. et al 2015 MBCA 58* at paragraph 30, Monnin, J.A., writing for the court, observed that the test to determine whether a solicitor-client relationship exists is "*whether a reasonable person, in the position of a party with knowledge of all the facts, could reasonably form the belief that the lawyer was acting for a particular party.*"

In *Jeffers v. Calico Compression Systems, 2002 ABQB 72 (CanLII)*, at para 8, Hawco, J. described some (not all) of the indicia of a solicitor/client relationship. The list includes:

- *a contract or retainer;*
- *a file opened by the lawyer;*
- *meetings between the lawyer and the party;*

- *correspondence between the lawyer and the party;*
- *a bill rendered by the lawyer to the party;*
- *a bill paid by the party;*
- *instructions given by the party to the lawyer;*
- *the lawyer acting on the instructions given;*
- *statements made by the lawyer that the lawyer is acting for the party;*
- *a reasonable expectation by the party about the lawyer's role;*
- *legal advice given; and*
- *legal documents created for the party.*

Note that NOT all indicia need to be present for the relationship to exist.

The ***Code*** **rule 1.1-1** defines "client" very broadly to include not only the person you undertake to represent, but also any person who consults you and reasonably concludes that you agreed to render legal services to them.

"Client" includes all clients of the law firm where you work whether or not you personally handle the client's work.

It is important to remember that a lawyer-client relationship can be established without formality and even without your intention to establish it. The person who claims you are their lawyer will be found to be a client if they can show that the circumstances are such that they can reasonably have concluded that you agreed and did give them legal services.

Caution:

The lawyer-client relationship can be created without a written retainer. It is always a question of fact.

Be wary of offering cocktail party advice; that chat you had with the neighbour over her difficulties with her employer and her questions about possible remedies might have seemed to be an informal chat to you, but if the neighbour shared confidential information with you and you offered advice, a lawyer-client relationship may have been created. If so, that would put you in a conflict position if you were later contacted by her employer to retain you to give advice about firing a difficult employee if it turns out the difficult employee is your neighbour!

C. WHAT IS A RETAINER?

Retainers have several definitions, but for the purposes of this module retainer means:

1. **THE ACT**, by a client, of hiring a lawyer to provide professional services.
2. **AN AMOUNT OF MONEY** paid by the client to the lawyer in order to secure the lawyer's professional services (i.e., a money retainer).
3. **THE DOCUMENT** that sets out the terms of engagement between the lawyer and the client for professional services (i.e., a retainer letter or retainer agreement).

1. Retainer means the act of hiring a lawyer to provide professional legal services.

A client is said to "retain" you when the client hires you to provide legal services. Always remember that whether the person is your client or not is a question of fact and does not depend on having a written retainer, or payment, or the opening of a file. The *Code of Professional Conduct* [the *Code*] definition of a client in Chapter 1.1-1 means that if there is objective evidence demonstrating that the person had a reasonable belief that a lawyer-client relationship was established with you, that person is deemed to be your client.

If you do not intend to provide legal services to a person, but there is a risk the person may not understand your intent, give the person a written non-engagement letter confirming that you are not acting for the person and that they should consult some other lawyer. You can prepare a standard non-engagement letter in advance and have it ready to use.

2. Retainer means an amount of money paid by the client to the lawyer in order to secure the lawyer's legal services (example: a money retainer also known as a deposit toward legal fees to be earned).

How much money you will need from a potential client as a money retainer or deposit toward fees before you will accept and undertake to do the legal work the client requires **is a business decision**. The amount you ask for may be based on (for example)

a) your past experience with similar matters;

b) a portion of your estimate of the total costs;

c) the full cost of estimated disbursements if the matter looks like there will be substantial disbursements that need to be paid early on;

d) in some situations where a fixed fee is desired you may want the full fixed fee paid before starting the work; or

e) if all of the legal services you are going to provide will be provided in a very short time (within a month), you may want the full estimated fee paid before you start the work.

The most common situation is that the money retainer you request will only serve as a down payment on the ultimate cost of the legal services you are going to provide. Most lawyers acting on a legal matter that spans a longer time than a month or two will send interim account invoices to keep the client aware of the costs being incurred, to pay the lawyer for the service as it is rendered, and to prompt your request that your client refresh the retainer so that there is always some of your client's money in your trust account available to pay for your continuing legal services.

Note: You are not REQUIRED to get money from a potential client in order to start providing your legal services, but it is a good business decision to do so whenever possible.

Money retainers are paid into your law firm's pooled trust account in trust for your client. You are not permitted to transfer any amount of the client's money retainer from your pooled trust account to your general account **until after**

- you have done the legal work you are billing for, and
- you have prepared and sent the statement of account for services rendered to the client.

3. Retainer means the document that sets out the terms of engagement between the lawyer and the client for professional legal services. It is called a retainer letter or a retainer agreement.

"It is rare for the insurance department to see a retainer letter on a claims file. I don't know if that is because Manitoba lawyers don't use retainer letters or because lawyers who don't, become the subject of insurance claims."

Tana Christianson, Director of Insurance
October 2017 LSM Communique

D. THE RETAINER AGREEMENT

In this module, the terms retainer, retainer letter, or retainer agreement, are used interchangeably to mean the written document. The term "standard office retainer" refers to a written document that contains the standard business terms you use with all clients. The term "detailed client-specific retainer" means a written document you create that contains the agreed terms that are specific to that client's matter.

In general, a retainer letter or agreement is a written document that confirms the terms of engagement for your professional services for a client's matter. It sets out the scope of services to be performed, your authority to act and the details of your fee arrangements. It is also evidence of the expectations you and your client will have of each other and should include your law firm's standard business practices.

Practice Tip:

A retainer is the contract between you and the potential client. **It is good practice to create a retainer in writing for every file you open.** By requiring the potential client to sign the retainer or acknowledge and accept the terms in an email before you open a file or start work, you reduce misunderstandings between you about what is to be done, the goals for the outcome of the legal matter and how you are going to get paid.

1. When to Introduce a Retainer Letter

Before the end of the first interview, once you understand the nature of the potential client's legal problem and have determined that you are interested and competent to represent this potential client on this particular matter, you should discuss your standard business terms with the potential client and then, if the client hires you, explain that you will ask the client to sign a retainer confirming the agreement between you.

The client needs to understand what it is that you can and cannot do for the client if you are retained to act. The client needs to understand what fees you will charge and for what services you will charge. Clients are often surprised to learn that you will charge them for every phone call or letter you send or receive.

In that first interview, tell the client what amount of money you will require as a retainer or deposit toward fees before you will open a file and begin providing any legal services to the client. Describe the first steps you will take on behalf of the client once you have the money.

Consider having one or more standard office retainers prepared that include the basic information related to your firm's business policies and practices that every lawyer can quickly access and adapt to a client's situation. Clients can sometimes be overwhelmed by the mere visit to a lawyer's office and the volume and detail of information you share, so giving the client a standard office retainer in every case, in addition to your explanations, ensures that every client is aware of your business policies and you can be sure that you have not forgotten to mention an important point.

It is also good practice for you to create a detailed client-specific retainer that you either give to the client with the standard office retainer at the first consultation, or you send out to the client shortly after the interview while the details of your specific agreement are fresh in your and the client's memory.

You can create that client-specific retainer in the client's presence, print it and attach it to the standard office retainer. Ask your client to review it and sign it and return it with the requested money retainer or deposit toward fees after which time you will open a file and begin providing your legal services.

If there are important deadlines or limitation dates related to your client's matter, highlight those in the client-specific retainer document and set a deadline by which the client must both return the signed client-specific retainer and pay the money requested so that you are not confronted with a last-minute retainer from a client who procrastinated until the limitation date or deadline is imminent.

Another option is to review the terms of your standard office retainer with the client in the office, and then tell the client that you will create a short document confirming the client-specific details you discussed in the interview and send that client-specific retainer to them for their review and signature. Do that within 24 hours if possible.

Be clear in your interview and in the client-specific retainer that you **will not** open a file or begin any legal services for the client until you have the signed retainer and the necessary deposit in your trust account, if that is the agreement you reached. Such an agreement can prevent an expectation in the potential client's mind that you will start work on the matter immediately after the initial interview ends.

It is a good practice to let the potential client have time on their own to read a retainer and sign it and gather the necessary money retainer. If the client has had some time to consider the retainer, it will be easier for the client to identify any questions he/she will have. If the client wants to review the retainer with another lawyer before signing, encourage them to do that. **Obviously, you only want clients who are sure that they want to hire you and only on terms that both of you have agreed will apply.**

Some lawyers prefer to get a retainer signed on the spot provided the client can pay the requested money retainer immediately, especially in a legal matter where time is limited (e.g. a limitation date, a deadline, a court date or a closing date is imminent).

If a client has an imminent court appearance, be cautious about appearing in court for the client before the retainer is signed and the money retainer has been paid into trust. Once you are on the court record as representing a client, if the client doesn't pay you and you are unwilling to represent the client for free, you may be required to bring a motion to withdraw from the record.

If you make it your routine practice to use a standard office retainer with a client-specific retainer and always insist on getting it signed and returned with the money retainer before starting work, you will reduce client-lawyer misunderstandings. Each of you are able to refer back to it and rely on it if there are any issues about what you have agreed to do for the client or what obligations the client has to meet.

2. What Content Should Your Retainer Contain?

"It may take some time to draft a retainer letter the first time but it can become a precedent that you can use with minor modifications on every file."

Tana Christianson

A retainer letter will contain many generic terms which can be set out in a standard office retainer that is ready to be given or mailed to every potential client.

The standard terms could explain your firm policies regarding communication, fees and disbursements, billing cycles, interest on outstanding accounts, increases in hourly rates, whether others will work on the file, the expectations you have of the client, what happens if either of you end the solicitor-client relationship before the file is complete, and other business terms you might feel are important for every client to know about how you and your firm work.

Caution:

Because **you** are drafting the retainer agreement, contract law provides that any ambiguities will be interpreted against the drafter, and that means, in favour of the client.

A standard office retainer might include:

a) Space for you to enter information about your client including the client's proper legal name, whether that client is an individual or a corporation or other entity you will represent and if so, the name of the person authorized to give instructions on behalf of the entity or corporation.

b) A statement that once signed, the retainer confirms your authority to act on the client's behalf when dealing with third parties within the scope of your retainer. (e.g. experts, doctors, witnesses, partners, businesses, the other side or their lawyer).

c) Information about lawyer-client confidentiality and the steps you take to keep the client's information private.

d) Your usual expectations of clients regarding communication; (e.g. client will respond to your requests, provide supplementary documents or information as needed in a timely manner).

e) Your standard practice regarding communications in your office (e.g. others who can handle some calls or emails; when and how you send updates and reports to the client, returning calls and emails; boundaries (e.g. no weekend calls unless a true emergency).

f) A statement that you will not do any work for the potential client until the retainer is signed by the client and returned to you (with any specific money retainer according to your agreement).

g) A date for return of the signed retainer with the money retainer. Set a date after which you will assume the client is not interested in retaining you – this permits you to control your workflow (e.g. so that you won't be bound by that retainer if the client waits 6 months before returning it to you).

h) How clients are generally expected to pay for your legal services (example: initial deposit toward fees to be earned, refreshed at each billing, accept or don't accept credit cards, fixed fee in full).

i) Whether there will be any adjustments for fees related to services provided by paralegals, articled students or other lawyers who may do work on the file.

j) General examples of what legal services will be included in the billing (e.g. all calls over a certain length, all emails, research, review of documents, meetings, waiting time at court, missed appointments).

k) Your business policies related to billing for legal services and disbursements, (e.g. frequency of billing, future increases of hourly rates with advance specified period of notice, what are disbursements, tax deductible items, GST issues, interest on outstanding accounts, and your expectation that the client will refresh the retainer after each interim billing and how that can be done).

l) How the lawyer-client relationship may be terminated by either of you and what will happen to the file and documents if the matter is not completed when the relationship ends

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"A good retainer letter manages the clients' and the lawyers' expectations of their relationship from the outset."

Tana Christianson

Client-specific details can be entered into the standard office retainer if you leave spaces for those details. Alternatively, the client-specific detail can be set out in an attached document that you prepare where you confirm, in a brief summary, the detail of what you are proposing to do for the client, including as much information as you feel is necessary to be clear for yourself and for your client.

Some examples of the details that a Client-specific retainer might include:

- The information provided by the client upon which you are basing your legal advice,
- A note that your advice may be different if the facts turn out to be different from those given by the client,
- A warning reminder of any limitation periods, notice requirements, deadlines which may affect your client's legal rights in the situation,
- What the client wants and values for outcomes,
- The specific legal services you are agreeing to provide (this is essential if the retainer is a limited scope retainer agreement – see below in section on *Limited Scope Retainers*),
- An estimated time line for dealing with the legal matter,
- The amount of the deposit toward fees and any other documents or information from the client you will require in order to open a file and start work,
- When you will start work and the steps you will take once you do,
- An estimate of the total cost if given.

Remember:

You have an obligation to act to preserve a client's interests. In appropriate circumstances, your retainer should include reminders of any imminent deadlines or limitation dates discussed in the interview that might be affected by the client's delay in responding to or retaining you or another lawyer.

"If it's hard to foresee the steps in the file then set out the first STAGE... [For example, say] 'We are going to do some preliminary investigation. Then we will have further consultations with you before [proceeding further].'

Tana Christianson

When drafting any retainer, keep in mind that it should be clear and easy to understand, and flexible enough to account for the particulars of the client's situation. Any ambiguity will be construed against the lawyer. Some examples of retainer letters that you can adapt according to your client's situation based on your own professional judgement can be found in Appendix B to this module.

E. NON-ENGAGEMENT LETTERS

What if you don't want to represent a potential client or don't feel competent to represent a prospective client?

If you decide not to represent a prospective client after a lengthy interview, it is a wise practice to send a non-engagement letter or email.

The purpose of a non-engagement letter is to dispel any notion in the mind of the prospective client that you have agreed to act. Sending a non-engagement email or letter is not necessary in every situation where you decline to act for a prospective client, but the few minutes it takes to send one are worth it to ensure the prospective client understands that you are not going to provide any legal services to them and will not take any steps in the matter on the client's behalf. You can keep all non-engagement letters or emails in a master non-engagement folder for all such letters as a record for yourself.

Non-engagement letters **should <u>not</u> include an opinion** regarding the merits of the matter you have declined. Including the information that there may be limitation dates pending and recommending that the client take immediate steps to consult another lawyer about any deadlines or notice requirements that might affect the client's legal rights is appropriate in some situations.

A sample non-engagement letter is included in Appendix B at the end of this module.

Practice Tip:

A non-engagement letter doesn't have to be long, but if there's even **a chance** that the client might think you are going to do something for them when you are not going to act for the client, **send it out and dispel all doubt!**

F. SPECIAL RETAINER AGREEMENTS

1. Contingency Fee Agreements

There are special rules for Contingency Fee Agreements.

Contingency Fee Agreements in a Nutshell

1. A contingency fee agreement provides that your fee for your legal services is contingent on the outcome of the client's matter.
2. There are mandatory rules you must follow and specific content that must be included in a contingency fee agreement. Read the *Code of Professional Conduct* and s.55 of *The Legal Profession Act* BEFORE you enter into any contingency agreement to be sure you don't overlook important provisions.
3. **A client who enters into a contingency fee agreement can apply to court, at any time up to 6 months <u>after</u> the payment set out in the agreement is paid, for a declaration that the contract is not fair and reasonable to the client, and if it is not, the agreement is void**, your fees will be taxed and you will be ordered to make repayment of any excess to the client.
4. Keep accurate records of your time and activities even though you are being paid on a contingency fee agreement because if the contingency agreement is later found to be void or you are discharged by your client without cause before the matter is completed, you will need a record of what and when you have provided legal services if you want to seek any payment as restitution for your work performed for the client.

a) What is a Contingency Fee Contract or Agreement?

"Contingency contract" is defined in section 55(1) of the *Legal Profession Act of Manitoba* [the *Act*] as

… a contract between a member and a person (referred to in this section as "the client") under which the member is to receive or retain, as remuneration for services rendered or to be rendered to the client, in lieu of or in addition to other remuneration for those services,

(a) a portion of the proceeds of the subject matter of the action or proceedings in which the member is or will be acting for the client;

(b) a portion of the money or property in respect of which the member is or may be retained or employed; or

(c) a commission or a percentage of:

(i) the amount recovered or defended, or

(ii) the value of the property that is the subject of a transaction, action, or proceeding.

No requirement for action

55(2) *A contingency contract may be made whether or not an action or proceeding has been commenced or is contemplated.*

Historically, a lawyer who entered into a contingency contract assumed some of the risk that the outcome might not be successful for the client pursuing or defending a legal matter. Because there was a risk, the lawyer would be paid for legal services rendered based on the outcome of the matter. For example, if the client did not recover any damages or monies from a settlement, the lawyer did not recover any fees for legal services rendered. In that case, the client paid only out-of-pocket expenses and other disbursements.

There is no requirement in the modern definition of contingency contract for there to be uncertainty about recovery, but the name, contingency contract, has stuck.

b) What Matters are Appropriate for a Contingency Fee Agreement?

You might enter into contingency fee agreements with clients who do not have access to funds or the ability give you a money retainer at the beginning of the matter or are unable to pay your fees until some money for the claim is recovered by your legal services.

If you expect that the client will recover some money at the end of the matter you may be willing to wait for that recovery before you are paid for the legal services rendered. Because of the situation, you might agree to take a percentage of the settlement/damages (or the costs awarded) as your fee for your legal services to the client instead of an hourly fee. The amount of the fee would then be contingent on the size of the settlement or damages awarded, or the costs in the matter.

In other jurisdictions where there is a right to sue for damages arising from motor vehicle accidents, contingency agreements are quite common. However, in Manitoba, there is no right to sue for damages arising from motor vehicle accidents.

Contingency agreements in Manitoba are most often used in personal injury matters where no motor vehicle is involved (e.g. slip and fall). However, contingency agreements can be used for any legal matter in Manitoba provided you and the client agree on the terms, the terms are fair and reasonable to the client, and you follow the *Code* and *Act* rules relating to contingency fee agreements. (see below)

Practice Tip:

You can enter into a contingency contract with a client whether or not an action or proceeding has been commenced or is contemplated.

c) What Content Must a Valid Contingency Fee Agreement Contain?

It is important that you identify, consider and address the issues that can arise in a contingent fee agreement before you create it.

For example, ask yourself:

- are disbursements to be billed and paid as they are incurred or only out of the final recovery? ;

- under what circumstances are you permitted to withdraw from representing the client before the matter is completed? ;

- If the client ends your retainer before the matter is done, will you still be paid for legal services rendered to that date?

Craft a retainer that takes these matters into account.

In Manitoba, there is no prescribed wording that must be included in a contingency fee agreement, but there are special provisions in the Code about when and how you may withdraw from representation when a contingency fee agreement is involved. There are also special limitations regarding solicitor's liens and your collection of outstanding fees and disbursements when a contingency fee agreement is involved.

If enforcing your solicitor's lien against the client's property in your possession would materially prejudice the client in an uncompleted matter, you are not permitted to assert it under Code rule 3.6-13. The Commentary to the rule makes it clear that there are no means by which you can actively enforce your lien against the client's property. If the client is willing to enter into a new agreement to pay your fees where you are reasonably assured of being paid "in due course", you are not permitted to enforce your lien for non-payment.

If you withdraw without just cause before the client's matter is completed, you lose your solicitor's lien over the client's documents.

Unless the contingency fee agreement addresses those issues directly and provides for a different arrangement, you will be bound to follow the rules set out in the Code. But remember, all terms in the contingency fee agreement must be fair and reasonable to the client to be enforceable.

d) What You Must Do at the Time of Entering into the Contract

The only action required of you when you are entering into a contingency fee agreement in Manitoba is that you must give the client both a copy of the contingency fee agreement in writing AND a copy of subsections 55(5) and 55(7) from Division 5 of the *Legal Profession Act* of Manitoba.

Under subsection 55(4) of the *Legal Profession Act* of Manitoba, failure to do so means you are not entitled to "any remuneration exceeding that to which [you] would have been entitled without the contingency contract".

Practice Tip:

It is good practice to keep a record of the time spent and details of the legal services rendered even if you have entered into a contingency agreement in case you are ever required to justify a fee or are taxed on the payment. Even if you have included a provision in your contingency agreement that permits you to be paid a reasonable fee if you are discharged before the end of the legal matter, you can be in a difficult position if you have kept little to no record of the work you did on the file and the time spent. For example, if there is a taxation (where a client challenges the amount of your fee before a Master) failure to have detailed records makes it more difficult to prove the full amount of your claim.

e) What can the Fee be in a Contingency Fee agreement?

In Manitoba, there is no prescribed limit to the size of the percentage of the award or settlement that you can charge under a contingent fee agreement, but like all fee agreements, the ultimate fee must be fair and reasonable to the client.

Just like a regular fee agreement, you must provide the client with a final account for your legal services under a contingency fee agreement. You may collect payment of any final account over time, but you must always render a final account to your client before you collect payment under the contingency agreement. The client is entitled to know the ultimate fee payable under the contingency fee agreement before payment of it.

Under s. 55(5) of the *Legal Profession Act*, a client may apply to the Court of Queen's Bench for a declaration that the contract is not fair and reasonable to the client at any time within 6 months after the payment provided for in the contingency contract is paid to or retained by you. That means that the client's right to complain about the fee in the contingency fee agreement does not end with the payment of the statement of account and closing of the file.

Under s. 55(7) of *The Legal Profession Act*, the judge, who can hear the application orally or by affidavit, MUST declare the contingency contract VOID if the judge is satisfied that the contingency contract is not fair and reasonable to the client.

If the contingency fee agreement is void, the judge must order that your accounts for legal services and disbursements be taxed as if no contingency contract had been made. If it turns out that you have received or retained more than the taxed amount, the court MUST order repayment of the excess to the client.

Example:

Assume you have taken on a client on a contingent fee basis and have just finished examinations for discovery. You have not tracked any of your time on the file. You have some outstanding disbursements.

Your client becomes displeased with you and decides to change lawyers. The new lawyer asks for the file and you want to release the file to the new lawyer on her undertaking to pay your fees for work you performed to date out of the eventual settlement or award in the case. Under the *Code* provisions about solicitor's liens, you cannot insist on payment unless you have a provision in the contingency agreement allowing you to do so.

f) Ending the Relationship under a Contingency Fee Agreement

The *Code* section 3.6-2 Commentary 2 provides that you cannot withdraw from representing your client on a contingency agreement except for circumstances as set out in the section on Obligatory Withdrawal under the *Code* section 3.7-7.

That means that you are only permitted to withdraw from a contingency fee agreement if

- the client discharges you, or
- the client persists in instructing you to act contrary to professional ethics; or
- you are no longer competent to continue to handle the client's matter

unless the written contingency contract between you and your client specifically states otherwise and sets out the circumstances under which you may withdraw.

Just like any other time you withdraw your legal services, under *Code* rule 3.7-8, you are required to try to minimize expense and avoid prejudice to the client and do all that can reasonably be done to help ensure the orderly transfer of the matter to the client's new lawyer if there is one, or directly to the client if the client is going to be self-represented.

The general *Code* rules about Withdrawal from Representation are set out in section 3.7 and they apply both to your withdrawal from a contingency agreement prior to its completion and your discharge from a matter on a contingency agreement prior to its completion.

Those rules require that you give your client written notice of the fact and the reasons for your withdrawal, you deliver the client's papers and property to them, account for all the client's funds, render a final account, notify any other lawyer or party that needs to know and give the client all relevant information in connection with the matter. Your professional obligation includes the obligation to cooperate with subsequent counsel and to comply with any applicable rules of court.

Final Reminders about Contingency Fee Agreements

- Don't enter into contingency agreements lightly. Contingency agreements are specialized retainers and you must comply with the rules set out in the *Code*, the rule*s* and the *Act* related to those contracts.
- Don't assume that you will be paid immediately if the client ends the retainer before the matter is concluded.
- Keep good time records even on files with a contingency fee agreement just in case you have to prove what you have done for the client.
- Remember, if a contingency contract is not fair and reasonable, the judge must declare the contract VOID and send your account to taxation before the Master.
- The client can challenge the fee in court at any time within six months after the final bill is rendered.

2. Joint Retainer Agreements

Generally, you represent only one client on a legal matter.

In some circumstances, you might be asked to enter into a retainer agreement to represent more than one client in the one retainer. You can only accept such a request if you have the clients agree to let you act for them on a joint retainer. A joint retainer means that you are retained by all of those clients to act on the same matter at the same time and there is no lawyer-client confidentiality among the clients with respect to information from any one of them to you.

The general rule is that you can only act jointly for clients when their interests are not in conflict. You cannot enter into a joint retainer with clients whose interests are directly in conflict.

The joint retainer agreement must be in writing and the *Code* in rule 3.4-5 requires that you advise all the clients that:

(a) you have been asked to act for both or all of them;

(b) no information received in connection with the matter from one client can be treated as confidential so far as any of the others are concerned; and

(c) if a conflict develops that cannot be resolved, you cannot continue to act for both or all of them and you may have to withdraw completely.

The Commentary suggests that when one of the clients is less sophisticated or more vulnerable than the other or others, you should recommend that the client get independent legal advice before consenting to a joint retainer.

If you accept Wills Instructions from Spouses or Partners to prepare Wills based on their shared understanding of what is going to be in each other's Will, you must treat the matter as if it was a joint retainer and before you draft the Wills, you must advise the spouses or partners that:

(a) you have been asked to act for both or all of them to prepare the Wills and you will only do so on a joint retainer;

(b) a joint retainer means that no information received from one of them in connection with the instructions and preparation and signing of the Wills can be treated as confidential so far as the other is concerned, so you will share all information with both of them that either of them shares with you; and

(c) if a conflict about the matter develops that cannot be resolved, you cannot continue to act for both of them and you may have to withdraw completely and send them to hire separate lawyers.

Those are, so far, the same obligations that you have under *Code* rule 3.4-5 whenever you accept a joint retainer.

However, when representing spouses or partners on a joint retainer for taking instructions to prepare Wills, **you have <u>an additional obligation</u>** to advise the spouses or partners at the outset that, if some time after you take their instructions under the joint retainer, only one of them contacts you to communicate new instructions to change or revoke a Will you have specific ethical obligations:

(a) you will treat the subsequent communication as a request for a new retainer about drafting a Will and not as part of this joint retainer between them;

(b) you will not disclose this subsequent communication to the other spouse or partner because you are obliged to hold the communication about the request for a new retainer in strict confidence in accordance with rule 3.3-1, and

(c) you will not act for the person on the new retainer, unless <u>before the request for the new retainer</u>:

i. The spouses or partners annulled their marriage or divorced or permanently ended their conjugal relationship or their close personal relationship; or

ii. the other spouse or partner died; or

iii. the other spouse or partner was informed of the subsequent communication about a new retainer (with the permission of the partner or spouse who asked for the new retainer) and that other spouse or partner agreed, in writing, to you acting on the new instructions.

The other spouse or partner is now your former client and therefore must consent in writing before you can act on the new retainer that will affect the past legal work you did. See the rules about acting against former clients below.

<u>After</u> you have informed the spouses or partners of these restrictions and your obligations to withdraw from the joint retainer in certain circumstances and before you can prepare their Wills, you must get their written consent to the joint retainer or confirm their consent in a separate written communication to each of them. See *Code* rule 3.4-7 where your professional obligations regarding joint retainers are detailed.

Caution:

The *Code of Professional Conduct* is strict about the requirements you must meet if you want to act under a joint retainer because of the risk of conflicting interests arising. Always consult the most current version of the *Code* before you enter into any joint retainer agreements to be sure that you are complying with all of the requirements and have considered the risks outlined in the *Code* Commentaries. If you think it is likely that a contentious issue will arise between or among the parties who want you to act for them on a joint retainer, you should decline the joint retainer and avoid acting for more than one client on that matter.

Code rule 3.4-7 contemplates that some clients will want you to act for them on a joint retainer even where there is a potential for conflicting interests to arise. A fully informed client can consent to accept the risks. If you have advised the clients of the potential for conflict but the clients still want to have you represent them on a joint retainer, you can accept the joint retainer if each client consents in writing or you confirm the consent in a separate written communication to each client before acting on the joint retainer.

Residential real estate practices with joint retainers

In Manitoba, the general rule under the *Code* rule 3.4-12 is that you must not act for both the lender and the borrower in a mortgage or loan transaction.

> *3.4-12 Subject to rule 3.4-14, a lawyer or two or more lawyers practising in partnership or association must not act for or otherwise represent both lender and borrower in a mortgage or loan transaction.*

The borrower and the lender on a mortgage or loan transaction are considered to be on opposite sides of the transaction and their interests are not the same, and on some issues, may become adverse.

For example, assume you agreed to act for both Borrower B and private Lender L. Also assume Client B agreed to borrow money from Client L at a borderline criminal rate of interest. Your duty of candour to Client B requires you to tell Client B that the rate of interest is close to the borderline of a criminal rate of interest and advise Client B that they should investigate other possible lenders. But your duty of commitment (not to act against your client's interests) would prevent you from speaking out against Client L's interest as the lender. Your professional duties of loyalty to the two clients are in conflict.

Exception to the prohibition on acting for both a lender and a borrower

The exceptions to this prohibition are set out in rule 3.4-14. You are permitted to act for both lenders and borrowers in any of the following four situations:

- where the lender is a "lending client", or
- where the lender is selling real property to the borrower and the mortgage which is the subject of the transaction is part of the purchase price, or
- where you are practicing in a remote location where a person could not conveniently retain another lawyer for a borrower-lender situation, or
- where the lender and borrower are not at arm's length from each other as defined in the *Income Tax Act (Canada).*

In *Code* rules 3.4-14 to 3.4-16 dealing with acting for borrowers and lenders, the term "lending client" is defined in *Code* rule 3.4-13 as *… a client that is a bank, trust company, insurance company, credit union or finance company that lends money in the ordinary course of its business.*

If you meet the exceptions in rule 3.4-14, and you decide you will act for more than one client in the borrower and lender situation, you are permitted to do so but only if the borrow and lender retain you on a joint retainer.

Disclosure to borrower and lender on joint retainer

All material information that is relevant to the transaction must be disclosed to both the borrower and the lender in a mortgage or loan transaction when you are acting for both sides. You must objectively determine what information is material to the transaction and the parties. Commentary to rule 3.4-15 defines material information as any fact that objectively would be seen as relevant by any reasonable borrower or lender.

For example, if the borrower has a private loan separate from the loan or mortgage arranged with the lender in the transaction, you would be bound to disclose that to the lender and could not keep that confidential for the borrower. It might have an impact on whether the lender proceeds with the loan, and objectively, that makes it material information and must be disclosed to both the lender and the borrower.

Implied Consent for lending clients in mortgage or loans with written instructions

The *Code* rules 3.4-15 and 3.4-16 are intended to simplify the advice and consent process around joint retainers when you are dealing with lending clients, those institutional lender clients. Lending clients are generally sophisticated clients because they lend money in the ordinary course of business. The practice in Manitoba is that lending clients will send you their written instructions if you are the lawyer acting for the borrower of the mortgage or other loan from the lending client.

Unless the lending client requires that its consent be reduced to writing, if you receive written instructions from a lending client to act on the borrower's loan or mortgage (including any guarantee of that mortgage or loan), the lending client is deemed to consent to being on a joint retainer with the borrower and you do not have to explain the rules about joint retainers to the lending client and you do not have to seek a separate written consent to the joint retainer from the lending client. You can act for the lending client on a joint retainer on receipt of the written instructions regarding the mortgage or loan transaction.

You must still explain the rules and restrictions relating to joint retainers to the borrower. The borrower must still either consent in writing or you can confirm the borrower's consent by written communication to the borrower.

The lending client's deemed consent to a joint retainer under rule 3.4-16 applies to all loans when you are acting jointly for both the lending client and another client regardless of the purpose of the loan, including, without restriction, mortgage loans, business loans and personal loans. It also applies where there is a guarantee of such a loan.

Remember that you cannot keep the borrower and the lender's respective information confidential from the other on a joint retainer, and that applies whether the lender is a lending client, or you are acting for both the borrower and the lender under one of the other three exceptions set out in *Code* rule 3.4-14.

Also, *Code* rule 3.4-15 specifically requires that you must disclose all material information that is relevant to the transaction to both the borrower and the lender, whether the parties ask for it or not, BEFORE you advance or release the mortgage or loan funds.

Again, what is material is determined objectively.

The *Code* Commentary 1 gives an example of what information is material to a transaction between a borrower and a lender on a joint retainer:

Commentary

[1] … An example is a price escalation or "flip", where a property is re-transferred or re-sold on the same day or within a short time period for a significantly higher price. ….

Acting for the buyer, the seller and the lender on a residential transaction

Generally, it is not a good idea for you to act for the buyer, the seller <u>and</u> the lender on a real estate transaction. The buyer's and the seller's legal interests are at high risk to become adverse.

Some lawyers who act on residential real estate transactions in Manitoba have entered into a joint retainer for all parties to a residential purchase and sale; in that case they represent the buyer and the seller and the mortgagee (if there is one) all on a joint retainer. Acting for a seller AND a buyer and a lender is NOT recommended because acting for all of them is fraught with risk.

This breaks the general rule against acting for parties who are adverse in interest and the general rule against acting for borrowers and lenders. It can be done in the rare case where the deal does not have any controversial terms and only if you are extremely careful.

You may act for the buyer and seller and lender on a real estate transaction ONLY if you comply with all the following *Code* rules:

1) Tell the buyer and the seller (and the mortgagee if there is one) that you have been asked to act for both or all of them;

   AND

2) Tell the buyer and the seller and the lender that you will not represent all of them unless they are prepared to enter into a joint retainer (See *Code* rule 3.4-5); BUT NOTE THAT you cannot enter into a joint retainer with the borrower and the lender unless the lender is

   i) a lending client,

   ii) or the lender is selling the real property to the borrower and the mortgage loan represents part of the purchase price,

   iii) or you are practicing in a remote location where there are no other lawyers that the borrower or lender could conveniently retain for the mortgage or loan transaction,

   iv) or the lender and the borrower are not at "arm's – length" as defined in the *Income Tax Act (Canada)* (See *Code* rules 3.4-12 – 3.4-16);

   AND,

3) Tell all of them, in writing preferably, that under the joint retainer, you will not treat any information you receive from any of them as confidential from the others—your knowledge will be shared with all of them and in relation to relevant information, they will be treated as if they were one client (See *Code* rule 3.4-5(b));

   AND,

4) Tell all of them that if a conflict or contentious issue develops that cannot be resolved by them without your involvement, you cannot continue to act for them under the joint retainer and will have to withdraw completely and they will have to retain their own lawyers (See *Code* rules 3.4-5 (c) and 3.4-8);

   AND,

5) If you have a continuing relationship and regularly act for one of the proposed parties to the joint retainer, you must tell all of them about the fact of the continuing relationship and recommend that the others get independent legal advice about whether to enter into a joint retainer in the situation (See *Code* rule 3.4-6);

   AND,

6) If you want to be able to act for one of the parties to the joint retainer in this matter even if a contentious issue arises that cannot be resolved by the parties themselves, then you must disclose that fact to all the parties and ask them if they will consent to you representing only one of them if you must withdraw from the joint retainer; but they are not required to agree to this in order for you to accept a joint retainer from them and there is no guarantee that their prior consent to you acting for one of them will be binding on them if the contentious issue that arises was not specifically contemplated (See *Code* rule 3.4-9);

   AND,

7) If they are all still willing to have you represent them on the joint retainer under these conditions, then you must get them to give you their written consent to represent them on the joint retainer or you must confirm their consent by separate written communication to each of them prior to acting (See *Code* rule 3.4-7).

Remember that if a contentious issue arises between/among your joint retainer clients the *Code* rule 3.4-8 says you must not advise them on the contentious issue and must refer them to other lawyers. You are permitted, under Rule 3.4-8, to inform them of their option to settle the issue between themselves by direct negotiation **if no legal advice is involved and the clients are sophisticated.** You can advise them on non-contentious matters, if they are dealing with the contentious matter on their own, but be very careful. If they can resolve the contentious issue on their own without your involvement you may continue to act for all parties on the joint retainer.

However, you must withdraw from the joint retainer if the contentious issue is not resolved by the clients themselves. (See *Code* rules 3.4-5 (c) and 3.4-8 (b))

Practice Tip:

If you plan to act regularly on residential sales and purchases and want to offer the choice of a joint retainer to the parties to the contract, it would be good practice for you to draft a standard joint retainer agreement for residential purchase and sale situations that you give to all clients who may want to enter into a joint retainer. The joint retainer should be in writing and should highlight the provisions of the *Code* on Joint retainers. Make it your practice to ensure you send it to each client before proceeding.

You must get written consent from each of them or confirm the written consent with each of them separately before acting. Draw special attention to the fact that there will be no confidentiality as between/among the clients. Outline with an example what could happen if a contentious issue arises between the clients to be sure that the clients understand that there is a possibility that they may each have to get their own lawyers anyway if the contentious matter cannot be resolved by them. Sometimes, a joint retainer is not the cheapest option for them.

Final Reminders about Joint Retainers

- Be intimately familiar with the sections of the *Code* dealing with joint retainers.
- Have a standard practice for informing clients about the detailed rules.
- Be very careful before entering into joint retainers with unsophisticated clients OR where the potential for contentious issues to arise exists.

3. Limited Scope Retainers

Limited Scope Retainers (LSRs) In a Nutshell

1. Limited scope retainers or limited service retainers or unbundled legal service agreements (terms used interchangeably) are written agreements between you and the client used when the client retains you to perform only some of the legal services that would normally be required in a full service retainer for their legal matter, and the client maintains responsibility for performing the remainder of the tasks.
2. Limited scope retainers are useful for clients who cannot afford or do not want full service legal representation, but can benefit from and do want some limited legal help with their matter. Not every legal problem is appropriate for a limited scope retainer, but there are many opportunities for limited scope retainers in practice. Some suggestions of appropriate and inappropriate requests for limited scope retainers are detailed in this module.
3. There are specific rules about limited scope retainers in the *Code of Professional Conduct* [the *Code*] that you should review before you enter into such a retainer. See especially the *Code* **rule 3.2-1A**
4. Limited scope retainers must be confirmed in writing and must clearly state what you agree to do and what you will not do for the client. Sample limited scope retainers are included in the Appendix B to this module.
5. The limited scope retainer does not exempt you from the duty to provide competent and ethical representation to the client. See the *Code* **3.1-2 Commentary [7A]**
6. Under *Queen's Bench* **rule 15.01.1(1),** if a party who is acting in person retains you to appear for a particular purpose only (a limited scope retainer), "*the lawyer appearing must inform the court of the nature of the appearance before the appearance by filing the terms of the retainer, other than terms related to fees and disbursements*." See t*he Code* at **3.2-1A Commentaries [3 & 4]** regarding requirements not to mislead the tribunal and to manage communications with the other side when working under a limited scope retainer.
7. If you don't want the other lawyer contacting your LSR client directly without your consent, you must give the other lawyer notice that approaching, communicating or dealing with the person directly falls within your LSR representation agreement. See the *Code* **7.2-6A**.
8. Limited scope retainers are different from summary advice that might be given in a pro bono legal clinic or as duty counsel. See the *Code* **3.1-2 Commentary [7B], 3.2-1A Commentary [5] and 3.4-2D**

The Law Society of Manitoba encourages you to offer Limited Scope Retainers in appropriate circumstances provided you use a written limited scope retainer that is clear about the exact scope of the legal services that will and will not be provided to the client.

Limited Scope Retainers can be used to provide a variety of limited legal services to those who might otherwise be involved in the legal system without any legal advice. Some competent legal advice is better than none at all in many circumstances.

The ongoing research of the National Self-Represented Litigant Project in Ontario, and the August 2018 report of the Alberta Limited Legal Service Project found that there was a high level of client satisfaction with legal services offered under limited scope retainers provided a client is fully informed about what is and is not covered by the Limited Scope Retainer and the fees are fully disclosed.

a) Legislation for Limited Scope Retainers

The legislative rules about Limited Scope Retainers are found in the *Code of Professional Conduct*, [*the Code*] and in the *Court of Queen's Bench Rules [QB Rules].*

Code of Professional Conduct

Code Chapter 3.1 Competence

3.1-2 *A lawyer must perform all legal services undertaken on the client's behalf to the standard of a competent lawyer.*

Commentary

[5] A lawyer should not undertake a matter without honestly feeling competent to handle it, or being able to become competent without undue delay, risk, or expense to the client. The lawyer who proceeds on any other basis is not being honest with the client. This is an ethical consideration and is distinct from the standard of care that a tribunal would invoke for purposes of determining negligence.

[7A] When a lawyer considers whether to provide legal services under a limited scope retainer the lawyer must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner. An agreement for such services does not exempt a lawyer from the duty to provide competent representation. The lawyer should consider the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. The lawyer should ensure that the client is fully informed of the nature of the arrangement and clearly understands the scope and limitation of the services. See also rule 3.2-1A.

Limited Scope Retainers

Code Chapter 3.2 Quality of Service

3.2-1A *Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer* can *provide and must confirm in writing to the client as soon as practicable what services* will *be provided.*

Commentary

[1] Reducing to writing the discussions and agreement with the client about the limited scope retainer assists the lawyer and client in understanding the limitations of the service to be provided and any risks of the retainer.

[2] A lawyer who is providing legal services under a limited scope retainer should be careful to avoid acting in a way that suggests that the lawyer is providing full services to the client.

[3] Where the limited services being provided include an appearance before a tribunal a lawyer must be careful not to mislead the tribunal as to the scope of the retainer and should consider whether disclosure of the limited nature of the retainer is required by the rules of practice or the circumstances.

[4] A lawyer who is providing legal services under a limited scope retainer should consider how communications from opposing counsel in a matter should be managed (See rule 7.2-6A)

[5] This rule does not apply to situations in which a lawyer is providing summary advice, for example over a telephone hotline or as duty counsel, or to initial consultations that may result in the client retaining the lawyer.

Code Chapter 7.2 Responsibility to Lawyers and Others

7.2-6A *Where a person is represented by a lawyer under a limited scope retainer on a matter, another lawyer may, without the consent of the lawyer providing the limited scope legal services, approach, communicate or deal with the person directly on the matter unless the lawyer has been given written notice of the nature of the legal services being provided under the limited scope retainer and the approach, communication or dealing falls within the scope of that retainer.*

Commentary

[1] Where notice as described in rule 7.2-6A has been provided to a lawyer for an opposing party, the opposing lawyer is required to communicate with the person's lawyer, but only to the extent of the limited representation as identified by the lawyer. The opposing lawyer may communicate with the person on matters outside of the limited scope retainer.

Queen's Bench Rule 15 Representation by Lawyer

LIMITED RETAINER

Retaining lawyer for limited purpose

15.01.1(1) *If a party to a proceeding who is acting in person or a lawyer of record retains a lawyer to appear before the court for a particular purpose, the lawyer appearing must inform the court of the nature of the appearance before the appearance by filing the terms of the retainer, other than terms related to fees and disbursements.*

Duty to appear

15.01.1(2) *If a party to a proceeding who is acting in person retains a lawyer for a particular purpose, the party must attend the hearing or proceeding for which the lawyer is retained unless the court orders otherwise.*

b) Definition of Limited Scope Retainer

There are many terms used to describe the retainer where a lawyer agrees to do only a specific part of the legal services that a legal matter requires: Limited Scope retainer, limited service retainer, unbundled legal services, legal coaching, limited legal services are all used to describe this type of retainer agreement.

The following is a definition provided by the *National Self Represented Litigants Project* (NSRLP):

> *The formal term used by most rules of Professional Conduct is "limited scope retainer". The idea of "unbundling" one's services is a more visual way of conveying the same meaning - if full representation is a "complete bundle" or package of legal services, then "unbundling" extracts one of more of those services and offers them separately.*
>
> *"Legal coaching" is an expression developed and promoted by the NSRLP, and flows directly from the data collected from self-represented litigants in the 2013 National Self-Represented Litigants Study. which we use to describe the type of assistance that requires a client to do much of their own work, while the lawyer provides "coaching" –[which can include] guidance, information, strategic counsel, feedback and review.*

A limited scope retainer can mean you do a discrete task in the legal matter for the client, or it can mean that you will represent the client on one or more specific issues in the matter, or you may work in the background as a legal coach for the client. The client will handle all the other matters that would normally be legal services that you as the lawyer would provide in a traditional full service representation.

Practice Tip:

If you have enough knowledge about the legal matter on which the client is consulting you so that you are competent to represent the client, and you have enough experience with similar matters so that you can both anticipate and warn the client about common issues that may arise outside of your Limited Scope Retainer, consider offering your services for only a part of the legal matter on a Limited Scope Retainer if a client is unable to afford or does not want a full service retainer.

c) Types of Legal Services That Might Be Provided Under a Limited Scope Retainer

Limited scope retainers are becoming more common as more people represent themselves. Many people are unable to pay for full service representation for the entire legal matter but they are able to pay you for limited assistance. Some clients simply want to maintain control of their legal matter, and want to consult with you only as needed, or retain you to do a specialized legal service and handle the balance of the matter on their own.

If you are going to act for a client on a limited scope retainer, you must confirm the scope of the legal services that you WILL provide on the limited scope retainer in writing in accordance with the *Code*.

Code 3.2-1A requires that you advise the client of the "nature, extent and scope of services" you CAN provide on this client's legal matter. If you then contrast it with the nature, extent and scope of legal services you WILL provide on the limited scope retainer, a client is more likely to understand that the legal services you will provide on the limited scope retainer are only a portion of the legal work that could/should be done on the legal matter.

It is very important that you ensure that the client understands the limits of the limited scope retainer. Ensure the client understands that the client will bear all the responsibility for doing all the other work on the legal matter outside of the work you are retained to do on the limited scope retainer.

Caution:

Remember that any ambiguity in the terms of the limited scope retainer agreement you will draft will be construed in favour of the client. Keep it clear.

A. Some Examples of Unbundled Legal Services that Might be Appropriate for a Limited Scope Retainer:

- Evaluate the merits of a matter at a point and provide legal advice based on the limited knowledge of the facts provided. Include the fact basis for your legal advice and a warning that advice can change if the facts are different.
- Initial consultation for information and preliminary advice about legal rights and obligations in a matter.
- Follow-up consultation for advice and information about the procedure in a court matter.
- Draft or assist client to draft documents i.e. contracts, court orders, affidavits.
- Conduct an examination for discovery.
- Prepare and coach the client how to conduct an examination for discovery.
- Prepare the client to attend and argue a legal matter before a court or tribunal.
- Prepare a checklist of the tasks to be completed in a small claims action.
- Complete one or more transactional steps in a matter.
- Review the facts presented by a client and help the client identify the legal issues and the client's priorities in advance of a negotiation or mediation where the client will appear without a lawyer.
- Draft (ghost-write) pleadings or affidavits to be filed by the client who is otherwise self-represented. Do not include your firm name on pleadings in that situation **unless you are retained to file the pleadings. A client could change the documents you draft before filing them in court.**
- Review and offer advice on documents prepared by the client (e.g. holograph wills, separation agreements, documents for probating a Will, offer to purchase a business).
- Assist a client to fill out legal forms or complete them for the client to use.
- Coach a client on how to negotiate with lawyers on a specific issue.

- Prepare the client for a mediation which the client will attend alone.
- Explain the meaning of specific court rules relating to the client's matter.
- Do legal research on the relevant law and produce a legal opinion with advice.
- Provide independent legal advice on a contract.
- Represent a client in a bail application only.
- Represent a client in the argument of a motion only.

Practice Tip:

Record all LSR in writing and ensure that you clearly set out what you will and what you will NOT be doing for the client

Insist on having the limited service retainer signed by both you and the client BEFORE you start work on the matter.

Ensure both you and the client each have a copy of the signed limited scope retainer to prevent misunderstandings.

DO NOT exceed the scope of the limited scope retainer. If the client wants you to do more, create a NEW written Limited Scope Retainer agreement to prevent misunderstandings about what services the client is requiring you to do.

The *NSRLP website* offers suggestions of legal coaching services that could be offered on a limited scope retainer. The site gives detailed descriptions of "…Procedural coaching … Hearings coaching … Negotiation/ settlement coaching … "Traditional"/ substantive legal advice."

You will realize that many of the legal tasks that must be done on a file are tasks that lend themselves to a limited scope retainer. Just be careful you ensure the client is fully informed in writing and understands what the limits of the services mean in relation to the whole legal problem. You must also be satisfied that you can competently represent the client's interests by doing only a part of the legal services.

A follow-up study on the Alberta pilot by John-Paul Boyd for the Canadian Research Institute for Law and the Family found that 87.6 per cent of clients were satisfied or very satisfied with the coaching and unbundled services their lawyers provided. ... The model was good for lawyers as well. "In terms of the lawyers' experiences with unbundling, the report found 91.7 per cent of lawyers in the project were strongly satisfied or satisfied with providing unbundled services." Ninety per cent indicated they would continue to offer coaching and unbundled services.

B. You May Be Providing Limited Scope Legal Services Already

Sometimes you may not instantly recognize that the legal services you have been offering are actually limited scope legal services, and so you might not have been entering into a written limited scope retainer with that client for those services.

For example: Representing a client at a bail application only is a limited scope legal service. Giving independent legal advice on an agreement prepared without your involvement in the negotiation or drafting is a limited scope legal service.

Both you and the client are better protected if you start using a **written** Limited Scope Retainer agreement to prevent misunderstandings or to protect you from claims that you did not provide competent legal services. The *Code* rule 3.2**-1A** requires that the terms of a LSR must identify the legal services that will be provided and that these terms must be confirmed in writing to the client.

C. How to Decide if a Particular Case or Client is Suitable for a Limited Scope Retainer

1. Your Own Experience and Knowledge

Think about your competence and ethical obligations generally.

If you would not be competent to represent the client on a full service retainer in the situation, do not accept a Limited Scope Retainer in the matter.

You have the same professional obligations to be competent and ethical on a Limited Scope Retainer as you would have on a full service retainer. See the *Code* **3.1-2 Commentary [7A]**.

In the *Code* **Quality of Service 3.2-1 Commentary [5]** sets out examples of expected practices.

The quality of service expected of you under the *Code* applies equally to a limited scope retainer.

Examples of expected practices

[5] The quality of service to a client may be measured by the extent to which a lawyer maintains certain standards in practice. The following list, which is illustrative and not exhaustive, provides key examples of expected practices in this area:

(a) keeping a client reasonably informed;

(b) answering reasonable requests from a client for information;

(c) responding to a client's telephone calls and emails;

(d) keeping appointments with a client, or providing a timely explanation or apology when unable to keep such an appointment;

(e) taking appropriate steps to do something promised to a client, or informing or explaining to the client when it is not possible to do so; ensuring, where appropriate, that all instructions are in writing or confirmed in writing;

(f) answering, within a reasonable time, any communication that requires a reply;

(g) ensuring that work is done in a timely manner so that its value to the client is maintained;

(h) providing quality work and giving reasonable attention to the review of documentation to avoid delay and unnecessary costs to correct errors or omissions;

(i) maintaining office staff, facilities and equipment adequate to the lawyer's practice;

(j) informing a client of a proposal of settlement, and explaining the proposal properly;

(k) providing a client with complete and accurate relevant information about a matter;

(l) making a prompt and complete report when the work is finished or, if a final report cannot be made, providing an interim report when one might reasonably be expected;

(m) avoiding the use of intoxicants or drugs that interfere with or prejudice the lawyer's services to the client;

(n) being civil.

Commentary [6] refers to expectations regarding deadlines.

[6] A lawyer should meet deadlines, unless the lawyer is able to offer a reasonable explanation and ensure that no prejudice to the client will result. Whether or not a specific deadline applies, a lawyer should be prompt in handling a matter, responding to communications and reporting developments to the client. In the absence of developments, contact with the client should be maintained to the extent the client reasonably expects.

However, there is **no obligation** on a lawyer to act **beyond** the instructions in the limited scope retainer.

In *Lenz* v. *Broadhurst Main*, [2004] O.J. No. 288, *2004 CanLII 5059* (ON SC), upheld in the *Ontario Court of Appeal*, the Superior Court of Justice stated,

> *"The first source of a lawyer's duties is the retainer... [w]here there are special terms in the contract (i.e. a limited retainer), there can be no liability in tort when the solicitor performs the limited terms of the contract with reasonable care, skill and knowledge and he or she has no obligation to act beyond the instructions in the retainer."*

2. The Client

Think about the ability, cooperation and understanding the potential client displays

If the client appears to be unable or unwilling to understand that the legal services you will provide are only a part of what must be done in the matter and that the client must do the rest without your assistance, do not enter into a Limited Scope Retainer with that client.

Consider these questions from the *NSRLP article on the Nuts and Bolts of Unbundling*:

- *Does this potential client appear to understand that your services will be limited to those you both identify and delineate in the retainer?*
- *Does this potential client appear to have accepted that they must undertake the remainder of the necessary work themselves?*
- *Does this potential client appear to be realistic about the amount of time and work that remains for them to manage in order for them to successfully self-represent?*
- *Does this potential client have friends and family who will support them, or some other support network ...?*

- *What stage is this matter at? Has there already been some work done by the potential client and are they willing to spend sufficient time (and money) briefing you on this?*
- *Is this matter especially complex or difficult for a person without legal training to handle?*

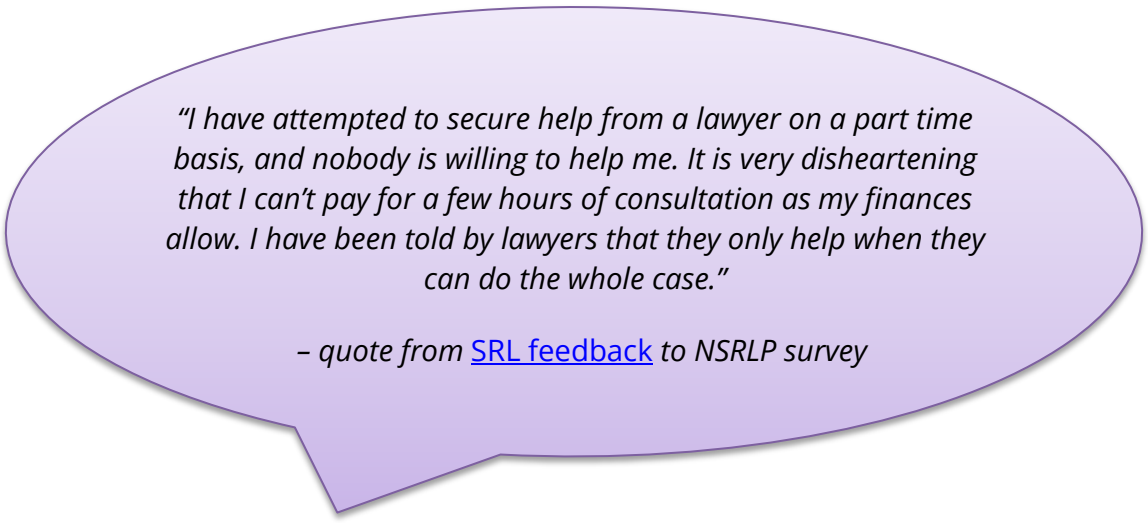
Not one of these questions is dispositive - but these are important questions to discuss with any potential client before agreeing to negotiate a limited scope retainer. If you have any doubts about any of these matters, don't enter into a limited scope retainer.

3. The Legal Matter Itself

Think about the complexity and breadth of the **legal matter itself**

If the client wants to retain you for a limited legal service but you think that the scope of the limited legal services requested is too narrow for you to be confident that you can give competent legal service, do not accept a Limited Scope Retainer in the matter.

But there are many ways to help a potential client without taking control of the entire legal matter. You can look at your own checklists of tasks for a legal matter and identify many that could stand alone and still give value to a potential client.



The main concern when you are entering into a limited scope retainer with a client is ensuring that you and the client clearly understand what you will and will not do and what the client must still do on their own. Although you are providing limited scope retainer legal services, you should alert the client both orally and in writing to reasonably apparent legal problems that are outside the scope of the retainer (e.g. "you should seek some tax advice, because I haven't reviewed this for any tax issues"; the need for further pleadings in the near future—" I drafted the statement of claim, but the statement of defence should be reviewed by a lawyer in case you need to file further documents in court after you see it"; the consequences of missing a deadline where you are not retained to meet it—"I drafted the statement of defence but you must pay and file it at the court office before the date of [date] to protect your legal rights or the plaintiff may be able to go ahead without your input.").

Lawyers' Professional Indemnity Company (LAWPRO) was created to insure lawyers against legal malpractice claims. It provides online information and advice through LAWPRO and PracticePRO.

From *LAWPRO's Best Practices Tip sheet on Limited Scope Representation:*

> *"Even where your representation is limited to particular tasks, you may still owe a duty to alert the client to legal problems outside the scope of your representation that are reasonably apparent and that may require legal assistance. Therefore, you should inform the client not only of the limitation of your representation, but also of the possible need for other counsel regarding issues you have not agreed to handle."*

For some practical steps to ensure that clients and cases are appropriate for limited scope representation see also *Stephanie L. Kimbro. The Ethics of Unbundling. 33 Fam. Advocate 27 (2010)*.

D. Deciding Whether to Take the Limited Scope Retainer Case

1. What Are the Risks Involved in Providing Legal Services Under a Limited Scope Retainer?

PracticePro says that the main risks you will face if you enter into limited scope retainers involve:

a) Failing to alert clients to the consequences and or risks in limiting your legal services to only a certain part of the legal matter.

b) Accepting a limited scope retainer where the limits on the retainer imposed by the client were unreasonable because the matter was too complex e.g. hiring you to explain the legal terms of a specific contract but not permitting you to spend time to investigate tax or insurance issues that would affect the interpretation of the terms.

c) Failing to be clear about which matters the client must complete e.g. accepting a limited scope retainer to draft a statement of defence but not being clear that the client was responsible to file that defence in court within a certain deadline.

d) Failing to clearly qualify your legal advice as being dependent on the specific facts and documents provided by the client and failing to warn that the advice could be different if the facts are different or if the client has not provided information or documents that you think could affect your opinion.

e) Drafting documents for the client in language that the client cannot understand.

Most of the risks can be managed by you consciously assessing whether the part of the legal matter that the client wants you to handle is appropriate for a limited scope retainer. The rest of the risks can be managed by using a clearly written limited scope retainer.

Note: Use a prepared standard written Limited Scope Retainer chart or checklist for a particular area of practice (for e.g. see family law Schedule A to BC Limited Scope Retainer sample in Appendix B) and review it with the client when agreeing to act on a Limited Scope Retainer. Mark the items you will do and cross off the items you will not do. Even if you don't get it signed, keep the original checklist in the file and give a photocopy to the client so that the client can clearly see what other matters will have to be handled by the client alone or on a separate retainer with you or another lawyer.

2. Are There More Negligence Claims or Complaints About Lawyers Who Use Limited Scope Retainers?

No. Again, from the *NSRLP research*: *There is no evidence that unbundled services generate more complaints to the regulators. At present, no law society tracks this data, but [NSRLP] efforts to determine this suggest that unbundling actually generates fewer not more complaints ([Dr. Julie Macfarlane] wrote about this here).*

LawPro writes about the risks of claims*:*

First, communication-related claims, which are the highest source of claims in virtually all areas of law typically happen[s] when there is a disagreement between what the lawyer and client have agreed to do. Was work promised but not done? Did the lawyer take steps to which the client never consented? A limited scope retainer that fails to draw the lines clearly – or fails to follow the lines drawn – can lead to a malpractice claim.

Second, limited scope representation presents a risk that lawyers may not dig deep enough and ask appropriate questions on a matter. The failure to undertake adequate investigation is another leading cause of claims. In the context where only some legal work is provided, it may be tempting to cut short a client interview once the paid-for time has run out. If the lawyer discovers any impending deadlines or limitation periods, they should be disclosed and, preferably, confirmed in writing. The interview with the client must be done as carefully as it would be for a client with full representation. If not, remember that lawyers who fail to warn their clients of material legal issues or claims, even where they were not part of the limited scope retainer, have been held liable for malpractice.

Practice Tip:

Use your own good professional judgment. Many of these suggestions apply equally to full service representation. Your limited scope retainer clients are likely to be more satisfied than many full service retainer clients if you follow these simple practises. Clear communication and confirmation of all details in writing doesn't take much effort and will document your file and educate your clients in ways which substantially increase the likelihood of a satisfactory relationship for each of you.

E. After you Accept a Limited Scope Retainer – Guarding Against Malpractice Claims

The practicePRO program provides risk management, claims prevention and law practice management information to Ontario lawyers. For tips to help you avoid malpractice claims when working on a limited scope retainer see *Practicepro.ca* limited scope representation resources. The following list is from their aids.

1. **Use *checklists*.**

   This documents who is going to do what before the next meeting. Give a copy to the client. Tailor checklists to your specific practice, fill them out while the client is present, and make sure that you and your client each have an initialed copy.

2. **Create a support group of experienced colleagues.**

   Limited experience with handling limited scope representation poses special challenges for newer lawyers or those new to a particular practice area. An experienced practitioner can confirm your analysis, suggest additional issues to explore or divert you from a particular proposed course of action. You might want to locate colleagues who are experienced with offering limited scope representation, and consider creating a study group, referral sources, or general references for each other. Meet with them periodically to discuss common problems and solutions. Most of the issues which will come up in a limited scope practice are practical rather than ethical, and it can be immensely helpful to talk to other practitioners who have faced the issues and developed solutions. See LAWPRO's *Managing a Mentoring Relationship* booklet at *practicepro.ca/mentoring* for helpful tips on working with a mentor.

3. **Practise defensively and document all decisions.**

   This is good advice in any type of legal work. It is particularly essential to document the instances in which you offer advice on a particular path for the self-represented litigant to take.

4. **WRITE IT DOWN.**

   Memorialize any changes in the scope of your limited representation as they occur. ***Never*** do work outside the scope of the original retention without a new retainer signed by the client. Checklists that attach to the fee agreement are a simple and reliable way to do this. A confirming letter that the client doesn't sign will probably be insufficient to effectively document the new limit in scope. Be sure that you and the client both sign off on any changes in scope.

5. **Use prepared handouts.**

   Many of you will already have prepared handouts on common questions which arise in your practice. It is helpful to have one which describes limited scope representation and details the specific options available. Note on your intake sheet which handouts you gave to the client and on what date. A sample client handout on limited scope representation is found at *practicepro.ca.*

6. **Making non-client laypersons part of your team is hazardous.**

   Limited scope representation may create an informal feeling to the lawyer-client relationship. Remember that, despite the apparent informality, this is a lawyer-client relationship. It is between you and your client, not you, your client, Aunt Mary, and others the client may want to have involved. Allowing third parties to participate may destroy the lawyer-client privilege. If the client insists on [using] non-clients, clearly advise [the client], in writing, in advance, of the risks involved.

7. **Refrain from providing forms with no assistance or review.**

   Some of the forms which will be required are simply too complicated for a self-represented litigant to complete without assistance. Your expert assistance in the completion of these forms is not only a best practice but will also reduce any potential liability.

8. **Do not encourage a self-represented litigant to handle a matter that is too technical or difficult.**

   A prime example of this problem is preparation of a factum. Part of your responsibility as a lawyer is to counsel a person *against* handling such a matter and to help them understand the cost/benefit analysis of using their litigation budget wisely to acquire the expert assistance in the areas where they most need it. This is an individualized assessment.

Caution:

You should be mindful of the whole legal process for a particular legal matter when working on only part of the process. On a limited scope retainer, you have an obligation to alert the client to apparent issues outside the limited scope of the retainer. Issues such as limitation dates and the consequences of missing them should be drawn to the client's attention, even if you are not retained to determine the specific limitation date in the matter.

F. Ending the Limited scope retainer

When the limited scope retainer is complete and your involvement as the lawyer has ended, confirm the end of the limited scope retainer in writing. If your initial limited scope retainer agreement was clear, it should be obvious to both you and the client that the matter is at an end, but confirm it in writing anyway.

Confirm the advice, the qualifications and the risks you explained to the client, and remind the client of any important steps related to the solution of the client's legal problem that you want to emphasize must be done by the client or by another lawyer.

When you confirm that the limited scope retainer is ended, clearly state that you will not be doing anything else in the matter.

Sample Limited Scope Retainer agreements are found in Appendix B.

4. Independent Legal Advice (ILA)

Giving independent legal advice can be seen as a form of a limited scope retainer. You have the same ethical and professional obligations relating to competence that you have with a full service retainer. It is rare for lawyers to have clients sign retainer agreements when the client is seeking independent legal advice only, but it would not be wrong to have the client do so.

Generally, a client comes to you to give independent legal advice about a transaction or an agreement.

It is very important to remember that you must go further than simply explaining the legal meaning of the matter and the potential consequences for the client.

You must also ask enough questions to be certain that you have confirmed

- that your client has legal capacity (age, sound mind);
- whether the client is subject to any undue influence; and
- if the client has any issues in communication (unable to hear properly; limited knowledge of the language of the document or your language) then you must be sure the client understands you and you may need to arrange for an independent interpreter.

There are at least three important points to remember when acting for a client who has retained you to give independent legal advice.

1. Use a checklist to be sure that you do not miss any important issues and as a supplementary record of what you discussed with the client.
2. Take detailed contemporaneous notes to keep in the file.
3. Send a brief reporting letter that covers the essential matters you discussed with the client, including the scope of services you provided and any recommendations you made to the client regarding the matter outside the scope of your services.

See Appendix B for suggested checklists.

5. Obligations When Witnessing Signatures on a Transfer or a Mortgage under the *Real Property Act*

The *Real Property Act* of Manitoba requires a lawyer to witness the signature of the transferor on a transfer of land and to witness the signature of the mortgagor on a mortgage where those respective documents are signed in Canada.

> ***Transfers witnessed by barristers or solicitors***
>
> 72.5(1) *If a transfer is executed within Canada, the signature of the transferor must be witnessed by a barrister or solicitor entitled to practise in the province or territory where the transfer is executed.*
>
> ***...***
>
> ***Mortgages witnessed by barristers or solicitors***
>
> 72.7(1) *If a mortgage is executed within Canada, the signature of the mortgagor must be witnessed by a barrister or solicitor entitled to practise in the province or territory where the mortgage is executed.*

These sections were enacted in 2011. One purpose was to help prevent fraudulent real property transactions by ensuring that the person signing the transfer or the mortgage was in fact the person named on the documents. Because a lawyer has a professional obligation under *Code* rule 3.2-7 to be on guard against being used to assist any dishonest or illegal conduct by anyone, the requirement that a lawyer witness those transactions was seen as a guarantee that there would be more than a perfunctory inquiry into the person's identity when transfer or mortgage documents were presented to a lawyer to witness. That general obligation means that when a person brings a transfer of land or a mortgage to you and asks you to witness their signature as required under the *Real Property Act*, you should be aware of the risks of being duped into assisting a fraudulent transaction and the risks of being an unwitting assistant to money-laundering activity.

Knowing those risks, it is expected that you will make the same inquiries and take the same steps to verify the signatory's identity that you would take if you were being retained by a client. It is also expected that you will ask questions about the nature of the transaction to satisfy yourself that the source of the funds behind the transaction are not linked to money laundering efforts or other criminal activity.

Open a file to keep track of the result of your inquiries for all signatures that you witness under the *Real Property Act*, even if the person is not able or willing to retain you to represent them on the transaction. You should record all the information you discover that confirms the person's identity and that the transaction is not linked to money laundering or other criminal activity.

6. Confirming the Identity of the Signer – New Rules

When confirming the identity of the signatory, you should follow the recommendations for verifying a client's identity. The rules about verifying a client's identity require more than the former "reasonable effort", and when dealing with witnessing a signature on a transfer of land or a mortgage, you will be expected to apply that higher standard.

There are three methods you can use to verify an individual's identity.

1. The first and best information to verify identity is valid, current and original government-issued documents containing the person's photograph. Ask to see the document and compare the photo identification to the person to assure yourself that this is the same person. Keep a photocopy of the photo identification provided on the file that you maintain to keep track of the signatures you witness under the *Real Property Act*. The signature on the identity document should match the signature on the documents being signed in front of you, as witness. If you choose, and your client consents, you may take a photo of person producing the identification as they hold it in front of them, and then you can save that photo on your electronic file. You must keep a record of the photo identification on your file.

2. The second method is to get the person's permission to access their credit file if they have been in Canada for over 3 years. Compare the names, addresses and dates of birth on the credit file with the information the person gives you in the office to ensure they match.

3. The third method is to get information from two different reliable sources to confirm the person's identity. One of the reliable sources must confirm the person's name and address and the other reliable source must confirm the person's name and birthdate. If only one reliable source is available, you must also get information that contains the person's name and confirms that they have a deposit account or a credit card or a loan with a financial institution. The reliable source must be independent of the person, an issuer of information that you trust that is well-known and considered reputable and it can be from a federal, provincial, territorial or municipal level of government.

If the signatory is a corporation, you must

1. Get a copy of the public record that confirms the corporation's existence, name and address, including the names of directors. Usually that will be a copy of the certificate of corporate status or an annual return.

2. Get the names and addresses of all persons who own, directly or indirectly, 25% or more of the corporation.

3. Make reasonable efforts to confirm the accuracy of the information you obtained regarding ownership, and keep a record of the efforts you made to determine ownership and the measures you took to confirm the accuracy of the information you obtained or were given.

If you obtain information that causes you or ought to cause you to know that you would be assisting in fraud or other illegal conduct, you must decline to witness the signature.

In general, after confirming the person's identity, even if you do not suspect fraud, money laundering or other illegal conduct, before you witness the person's signature, you should ensure that the person has capacity, does not appear to be under any undue influence to sign the document and understands the basic consequence to them of signing the transfer or the mortgage. If you are having reasonable doubts about any of those matters, you should refuse to witness the signature.

7. Witnessing a Signature or Notarizing a Document

If you are not being asked for legal advice and you are asked to simply witness a signature, other than a signature on a transfer or mortgage under the *Real Property Act*, you should document the fact that you are simply acting as a witness to the marking of the signature by writing under your signature "no legal advice sought or given". You must be careful to ensure the person does not reasonably conclude that you are entering into a solicitor-client relationship with them if you are only witnessing the signature. You must be very careful that you do not give ANY legal advice.

In such a situation, where it is not essential that it be a lawyer who witnesses the signature, it is likely better that you let someone else witness that signature to limit any risk that the person signing thinks they are getting legal advice simply because you are a lawyer.

If you decide that you want to witness the signature (other than a signature on a transfer or mortgage under the *Real Property Act*) , you, as a lawyer, still have the professional obligation to ensure that, at minimum, you are witnessing the signature of the person who is supposed to be signing the document. Ask for and keep a copy (by photo or by printer or scanner) of the identification of the person whose signature you are witnessing. A photo of the person holding the identification can be kept in your file. Before the person signs, ask questions to satisfy yourself that the person understands what they are signing. Record detailed notes in writing about your conclusion on the capacity of the person signing, whether there were any signs of undue influence, the proof offered that the person was who they said they were and the proper person to be signing the document.

When you are acting as a notary public only, be clear that you are not acting as a lawyer and you do not represent the person seeking your notarial services. Always be mindful about whether the other person might reasonably conclude that you are giving them legal services and creating a lawyer-client relationship.

RETAINER MODULE - MAIN REMINDER

Enter into a written retainer on every file.

G. APPENDIX A - RELEVANT LEGISLATION

The Legal Profession Act C.C.S.M. c. L107

Code of Professional Conduct

Rules of the Law Society of Manitoba

Court of Queen's Bench Rules

H. APPENDIX B – ONLINE RESOURCES

ALBERTA

Sample Retainer agreement

Model Non-engagement letter

BRITISH COLUMBIA

Sample retainer agreement

Sample joint retainer agreement

Independent Legal Advice model checklist

Model non-engagement letters

NOVA SCOTIA

Limited Scope Representation Agreement - Sample Form

Limited Scope Agreement - Sample Checklist

Limited Scope Retainer - Sample wording for inclusion in a Fee Agreement

ONTARIO

Law Society Ontario *Sample Non-Engagement Letter*

LAWPRO

Model retainers and agreements - General, Criminal, Estate administration, Estate probate, Family law

Limited scope Retainer Resources
Limited scope representation *flow chart for client*
Limited scope representation *flow chart for lawyers*

Retainer agreement for Limited Legal Advice and Services – Family Law matter

Checklist of topics and legal services discussed - Family Law Interview

From ALBERTA

Canadian Legal Research Institute for Law and the Family, Research Report August 2018 - *Client and Lawyer Satisfaction with Unbundled Legal Services: Conclusions from the Alberta Limited Legal Services Project* – The findings supported 13 conclusions about Limited Scope Retainers [LSR] which included at pp 63-64:

- that clients understand the nature of LSRs and public demand is strong;
- clients are satisfied with cost and speed of delivery of the legal services, usually couldn't have performed the services themselves and would not prefer to have hired their lawyer on a traditional, full-service retainer;
- lawyers are satisfied providing LSR services although they are less remunerative than the services they provide as a part of their ordinary practices, and intend to continue offering unbundled services in the future; ;
- retainer letters describing the scope of services to be delivered on an unbundled basis are not used with sufficient frequency, and those that are executed are not being amended to reflect changes in the scope or nature of the services provided.
- lawyers feel that providing unbundled legal services helps them contribute to improving access to justice and making legal services more affordable;

One of the five recommendations made at pages 64-65 was “efforts to encourage more lawyers to provide legal services on an unbundled basis should continue to be made, especially among lawyers practicing in the areas of family law, wills and estates and civil litigation.”

CBA AB collection of articles on Limited Scope Retainers

Example of website of law firm offering Limited Scope Retainer Options

From BRITISH COLUMBIA

Checklists by practice area

Risks and Tips Limited Scope Retainers

Risks and Tips Independent Legal Advice

Risks and Tips Witnessing Signatures

video on limited scope retainers CLE-TV Limited Scope Retainers - June 12, 2014

From NOVA SCOTIA

Limited Scope Retainer Resources

Professional Family Law Standard #11: *Scope of Representation* for further Limited Scope Retainer-related resources.

From ONTARIO

Family Law Limited Scope Services Project - provides easy-to-understand, step-by-step information on limited scope services and legal coaching in family law matters.

Shawyer Family *Law sample Limited Legal Services retainer agreement*

The Family Law Coach – "We're a new way of connecting self-reps experiencing a family matter with à la carte services, at fixed fees, from anywhere". … Legal Assistance and coaching – fixed fee family law services. Services – *Legal Coaching*, *Case Evaluations*, *Family Law Agreements*.

The *National Self Represented Litigants Project* website

The Nuts & Bolts of Unbundling: A NSRLP Resource for Lawyers Considering Offering Unbundled Legal Services Julie Macfarlane and Lidia Imbrogno

MISC HELP FOR CREATING RETAINER AGREEMENTS

Avoid a Claim – managing client expectations on limited scope retainers
CLEO, an organization similar to our CLEA in Manitoba, created a flowchart for SRL on the *steps in a family law case* in Ontario. You could create a similar one for your clients in Manitoba for any area of law in which you practise regularly and include it as education in your initial interview or include it as part of your retainer letter, or use it as a checklist to differentiate when you will be acting and when the client is on her own if you accept a limited scope retainer.
The *Self-Rep Navigators* is a group of lawyers working with self-represented litigants who, among other purposes, promote *limited scope retainer practice*.

From CANADIAN BAR ASSOCIATION (requires membership to access)

Limited Scope Retainers