

Best Practices for Limited Scope Services: Looking at issues of liability and good practice

Limited Scope or discrete legal services (sometimes called “unbundling”) refers to matters in which a client hires a lawyer to assist with specific elements of a matter such as legal advice, document preparation or document review, and/or limited appearances. The client and lawyer agree on the specific discrete tasks to be performed by the client and the lawyer. Depending on the nature of the lawyer's involvement, the lawyer may or may not enter an appearance with the court. The client represents him/herself in all other aspects of the case.

The special issues governing limited scope fall into three general categories:

- 1. The limitations on scope must be informed and in writing;**
- 2. Changes in scope must be documented;**
- 3. A lawyer has an affirmative duty to advise the client on related matters, even if not asked.**

The following guidelines are designed to assist lawyers in addressing and avoiding malpractice liability in a limited scope/discrete task representation. Limited scope representation does not differ substantially from the rest of your practice, and most of the suggestions which follow are equally applicable to full scope service. However, there are some specialized issues which require consideration.

It is important to note that limiting the scope of your representation does not limit your ethical obligations to the client, including the duty to maintain confidentiality, the duty to act competently, the duty not to communicate with another person known by you to be represented by legal counsel in the matter (absent written permission from counsel to do so), and the duty to avoid conflicts of interest. It is also important to note that limiting the scope of your representation does not limit your exposure to liability for work you have agreed to perform, nor is such a limitation permissible under the *Solicitors Act*, R.S.O 1990, c S.15.

Deciding whether to take the case

- 1. Work within your expertise.** As with full scope service, strongly consider rejecting a limited scope matter in areas of law in which you or your firm have little or no experience. Taking a case for the “learning experience” is unwise in limited representation, or any representation. It takes significant expertise in family law to be able to anticipate what issues will arise in a matter, and it is necessary to give good counsel and avoid liability. **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.**

This document can be found on LAWPRO's Limited Scope Representation Resources page at practicepro.ca/LimitedScope. It was adapted out of the Limited Representation Committee Risk Management Materials at the California Commission on Access to Justice, as created and updated by M. Sue Talia.

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.

- 2. Don't be pressured by emergencies.** Pay particular attention to prospective clients who have last-minute emergencies and seek limited scope representation. Limited scope representation does not mean that you do not have to provide competent assistance or zealous advocacy. Being pressured to conduct a “quick document review” because of an upcoming deadline is much riskier if you will only be involved in that brief transaction. Consider giving advice on ways to move the deadline, if possible, to allow adequate time for review or representation.
- 3. Be wary of clients who take a “musical chairs” approach to finding legal help.** Consider carefully the requests from prospective limited scope clients who have involved multiple lawyers in the same case. Bouncing around may be an indicator that the client is searching for the “right” answer after being given what they believe are unsatisfactory responses to previous analyses of their situation. You should avoid helping to facilitate situations in which a client may blame you for his/her discontent with the outcome. *On the other hand*, you may find that previous lawyers were uncomfortable with taking a “piece” of the case and that your prospective client simply had trouble finding a lawyer like yourself who was willing to work effectively with them on a limited scope basis. The client may have been viewed as “difficult” because s/he was seeking more of a partnership relationship than the traditional full scope representation envisions.
- 4. Be careful of clients who have unrealistic expectations.** A prospective client may be unrealistic about what s/he can achieve alone or about the nature of your limited scope representation. Part of your obligation in offering limited scope services is to teach the client about the legal system and the available remedies. Few non-lawyers will arrive on your doorstep with totally realistic expectations. Their beliefs are likely to have been shaped by what they have seen on TV, what they believe is fair, or what they have been told by neighbors or friends. You bring your knowledge and experience with the legal system to the relationship. If you believe that you will not be successful at reining in a client's unrealistic expectations, you should decline the representation. It is important that the self-represented litigants “hear” your advice in order to partner successfully with you in the representation and carry out a plan with your guidance. Not every client is temperamentally suited to representing him/herself.
- 5. Explain the “why.”** Limited scope matters are pursued in partnership with the client. A client who understands the “big picture” and the tradeoffs will not only be more successful in self-representation but also less likely to blame you for unwanted outcomes.
- 6. Clients with limited capacity or language barriers may not be good candidates.** Since limitations on scope by definition must be informed and in writing. Further to Commentary [7A], Rule 3.1-2 of the Rules of Professional Conduct, limited scope representation will generally not be appropriate if a client's ability to make adequately considered decisions in connection with the matter or representation is impaired due to minority, mental disability, or other reasons. That commentary states that a lawyer who is asked to provide legal services “must carefully assess in each case whether, under the circumstances, it is possible to render those services in a competent manner.” If the limitation is one of language (and many potential limited scope clients have limited English

skills) special issues are presented. If you are not bilingual yourself, you should insist on a translator. It is your responsibility to ensure that the client understands the limitations on scope and has the capacity to assist in their representation. This is an individualized assessment. Be creative in your fees or look for sources of *pro bono* or low cost assistance for these clients.

7. **Identify those with hidden motives.** Be wary if the prospective client has trouble focussing on the legal outcome even after you have carefully explained the possible remedies available to them. Emotional needs may be driving the request for assistance. While many cases involve an emotional component, self-represented litigants who seek revenge are likely to be unhappy with the limited results that the legal system provides and even unhappier with limited scope services. Clients who require a lot of hand holding are also unsuited to limited scope representation.
8. **Make sure the limited scope of your services is reasonable.** Although you and your client have substantial latitude in limiting the scope of your representation, the limitation must be reasonable under the circumstances and the client must give you informed consent. If you conclude that a short-term limited representation would not be reasonable under the circumstances, you may offer advice to the client but must also advise the client of the need for further assistance of legal counsel.
9. **[Family Lawyers:] Identify those with a history of domestic violence seeking limited scope legal assistance in cases involving the batterer.** Survivors of domestic violence face special issues when considering self-representation. The power inequities and intimidation present in an abusive situation must be considered. They may raise serious questions about her/his ability to maintain the balance necessary to pursue an action against the batterer. On the other hand, coaching the domestic violence survivor to successfully confront the batterer for the first time may be the best service you can render. The client may not be seeking limited scope services solely for financial reasons; they may be looking specifically for someone who can give them the tools to successfully enforce their own rights. Discuss these issues openly with the client.
10. **Clearly address the fee structure and its relation to services.** If during your initial interview you find that the prospective client is reluctant to discuss or agree on fees, be cautious. It is critical that the client understands that limited scope services not only limit your fees but *also* limit the services that you will perform for them. If anything, your fee arrangement must be clearer in limited scope representation than in full service. You must ensure that there is no misunderstanding about what limited services you have agreed to perform. In limited scope representation, it is crucial to be on a “pay as you go” basis, as you may never see the client again.
11. **A good diagnostic interview is critical.** It is critical to perform a good diagnostic interview to pick up all the critical issues in the case. Both experienced and inexperienced lawyers will find a checklist of issues in the relevant practice area to be extremely helpful in conducting a good diagnostic interview.
12. **Develop and use an intake form.** A good form should list the key issues and allow room to insert unusual ones. Give a completed copy to the client. It is a contemporaneous record which documents your file, reminds you to ask about related issues, memorializes the limitations on scope, and educates the client. Use and tailor

the forms which appear in these materials to make them work for you. Precedent intake forms are available at practicepro.ca/LimitedScope.

13. **Advise clients of their right to seek advice on issues outside the scope of the limited assignment.** It is probably a good idea to include in your intake sheet or handouts a statement that the client has been advised of the right to seek counsel on other issues.
14. **Use a clear fee agreement detailing the scope of representation.** A good limited services fee agreement will spell out exactly what you are doing for the client, and even more importantly, what you are *not* doing, and will detail what responsibilities the client will assume. There should be no confusion about the scope of the representation. Look at the included fee agreements here and on practicepro.ca/LimitedScope for sample agreements. Tailor them to each case and to your individual practice. A fee agreement which puts the limitations and checklist in an attachment is probably better suited to a case where you anticipate a change in scope.

After you take the case

15. **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. Precedent checklists are available at practicepro.ca/LimitedScope.
16. **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.
17. **Practice defensively and document all decisions.** This is good advice in any type of legal work. It is particularly essential to document instances in which you offer advice on a particular path for the self-represented litigant to take.
18. **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.

19. **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 included in the materials at practicepro.ca/LimitedScope.
20. **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 utilizing non-clients, clearly advise them, in writing, in advance, of the risks involved.
21. **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.
22. **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.

Ending the relationship

23. **Let the client know when your involvement has ended.** There should be no surprises either to you or the client about when your involvement in the matter has ended, and no unstated expectations of continued participation on your part. Send out a notice at the end of your involvement in a matter that involves a series of steps. Notify the client that you believe you have completed your part and advise him/her to get in touch with you immediately if s/he disagrees.
24. **If you have appeared at a hearing, let the court know about ending the relationship as well.** Use a Notice of Change in Representation or bring a motion to be removed as lawyer of record. Note that if an order arises from a hearing you appeared at, Rule 59.08(1) of the Rules of Civil Procedure requires you to act in the place of the party. If you do not wish to do so, your retainer must state that you will not act in the place of the party, and you must provide written notice of the fact to the parties and to the registrar. Don't attach your limited scope representation agreement to your motion materials, since that is a confidential communication.

Use good judgment. Many of these suggestions apply equally to full service representation. Your limited scope clients are likely to be more satisfied than your full service clients if you follow these simple practices. They don'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.

This document can be found on LAWPRO's Limited Scope Representation Resources page at practicepro.ca/LimitedScope. It was adapted out of the Limited Representation Committee Risk Management Materials at the California Commission on Access to Justice, as created and updated by M. Sue Talia.

Disclaimer: This document provides help to lawyers offering limited scope representation and practical advice on ways lawyers can minimize their exposure to malpractice claims. This document does not establish, report, or create the standard of care for lawyers. The material is not a complete analysis of any of the topics covered, and readers should conduct their own appropriate legal research. Copyright © 2015 Lawyers' Profession Indemnity Company. This document may be adapted for use by lawyers and paralegals for their legal practices.