



NOVA SCOTIA
BARRISTERS' SOCIETY

MEMORANDUM TO COUNCIL

From: Gavin Giles QC

Date: November 22, 2013

Subject: Professional Standards (Law Office Management) Committee – Client Service Standard

Date – May 25, 2013	Council	Introduction
Date – November 22, 2013	Council	Approval

Recommendation/Motion:

This is the second Standard being presented by the Professional Standards (Law Office Management) Committee for approval. Following introduction to Council on May 25, 2013, the proposed Standard was communicated to the membership for review and consultation and then brought back to Committee for consideration of comments. As a result of that consultation, various changes were made.

Executive Summary:

As previously discussed, one of the initiatives of the Nova Scotia Barristers' Society's Law Office Management Committee (LOMC) is to approve and circulate to the membership a draft set of *Client Service Standards*. The initiative is not designed to mandate certain types and forms of client service delivery. Rather, the initiative is designed to provide information to the membership on the existing client service standards applicable to them and to highlight the potential for the adoption of their own additional client service standards. The latter have been designed to reflect the general expectations which more and more clients are having with respect to the professional activities of their legal service providers and the recent thinking on the adoption, by some members of the legal profession, of formal client service standards.

The LOMC does not propose a "one size fits all" solution to the client service standards issue. Rather, there is a committee wide recognition that members provide their services to different and diverse clientele, each of whom (or each of which) will have individual expectations regarding what good client service entails. It is on that basis that these *Draft Client Service Standards* have been bifurcated into two categories: those which the member ***must*** provide and those which individual members might

consider adopting, depending on the nature of the practice and clientele which each individual member has.

The things which these *Draft Client Service Standards* do not address are those which relate to the practices of *Family Law* and *Real Estate Conveyancing*. Those two discrete practice areas are already governed by specific service standards which have been adopted by the Nova Scotia Barristers' Society.

INTRODUCTION:

In many respects, everything the members need to know regarding client service standards is already set out in the Nova Scotia Barristers' Society's *Code of Professional Conduct* ("the *Code*") adopted in 2012 and in the commentaries thereto. For the purposes of the LOMC, however, the standards are considered to be the minimum. The treatment they receive in these *Draft Client Service Standards* might best be viewed as a reminder only.

Chapter 1 of the *Code*, under the heading "Integrity", provides that a "lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity." The Chapter also provides that a "lawyer has a duty to uphold the standards and reputation of the legal profession and to assist in the advancement of its goals...."

Chapter 2 of the *Code*, under the heading "Relationship to Clients", provides that a lawyer must be generally competent to undertake the professional services they offer. Competence is further held by the Chapter to mean that the lawyer possesses and applies the "relevant knowledge, skills and attributes in a manner appropriate" to the professional services which she or he provides.¹

In all respects, a lawyer is required to possess and demonstrate "appropriate skills" in research and analysis, writing and drafting, negotiation and dispute resolution, advocacy and general problem solving which are appurtenant to the practice areas in which they are offering their professional services. In fact, a lawyer who fails to meet or exceed these very general client service standards may be subject to investigation and professional disciplinary proceedings and, in more extreme cases, to findings of malpractice.

Chapter 2 of the *Code* also sets out some general requirements with respect to a lawyer's relationship with her or his clients. Self-evident though some of these requirements are, they include, again without limitation, respect for the *Code*, honest, thoughtful, fulsome, timely and effective communication of all matters affecting a client's interests, conscientious and cost-effective service and the ability to recognize professional limitations, and the related requirement to refer a client to a more knowledgeable, capable or experienced legal services provider in certain circumstances.

Regarding the bifurcation referred to above, the *Draft Client Service Standards* are presented by the LOMC in two (2) parts. The first lists the existing standards which flow directly from the *Code*. In the nomenclature adopted by the LOMC, these are referred to generally as the regulatory or the

¹ "Relevant knowledge, skills and attributes" is further defined to include, without limitation, a general knowledge of the legal principles and procedures relevant to any discrete practice area in which the lawyer is involved, the ability to ascertain the relevant facts, issues and client objectives pertaining to any matter or transaction and a general knowledge of the possible options for the client to consider.

“above the line” standards. The second lists some best practices with respect to client service and related client service standards. These are designed to assist members in devising their own client service standards; those which can be tailored to meet whatever needs any particular member may have. They have been referred to by the LOMC as the “below the line” standards.

Drawing from the general introduction above, Chapter 2 of the *Code* sets out the following client service standards (expressed herein by way of summary only). These client service standards apply to all lawyers, regardless of their practice type. They highlight every lawyer’s regulatory mandate: to provide legal services which are:

- Of the *Quality* necessary to meet the client’s objective, the advancement of her or his position, the protection of her or his interests and the defence against any contrary position(s) being take with respect to her or his interests
- Which are *Consistent*
- Which are *Timely*
- Which are *Responsive*
- Which are *Reasonably and Competitively Priced*

Applying, as they do, to all lawyers, the regulatory or above the line client service standards set out have been expressed in mandatory language.

Though the Regulatory Client Service Standards set out should be viewed as the minimum standards for safe and effective legal practice to be exercised by members of the Nova Scotia Barristers’ Society, there exists a wide body of knowledge encompassing a variety of more specific and detailed client service standards. These are offered as Practice Notes by the LOMC for the consideration of individual lawyers and of the firms to which they may belong.

A factor governing the LOMC’s inclusion of these non-regulatory client service standards is the recognition that in addition to it being a profession, legal practice is also a service business and that in addition to the technical capability a lawyer might have, her or his attraction to clients may be rooted in the manner(s) in which legal services are provided. The following statement has been considered by the LOMC as a loose guiding principle.

“When it comes right down to it, client service is the quality many clients use to distinguish one law firm from another. If your firm offers outstanding service, clients are likely to use you again – and refer you to others. If your firm offers mediocre or poor service, clients are less likely to use you again or refer you to others – especially when there are so many options available. Research shows that unhappy clients rarely complain, but they will look elsewhere.”

– Janet Ellen Raasch²

² Janet Raasch is a Denver, Colorado-based legal practice thinker and writer. A journalist by profession, she has authored a dozen books, a dozen more websites and more than 1,000 articles on law firm marketing. She has consulted to some of the world’s largest law firms including, in Canada, Blake, Cassels & Graydon and Stikeman Elliott. In her theory, supported by her research, equally-qualified lawyers are oftentimes selected for key

Some of the comments / questions to which the Committee has responded are as follows:

1. Can the Standards be drafted to refer to “lawyers” as opposed to “a lawyer”. Yes, they could. However, the singular version is consistent with the drafting of all other Standards.

2. Are these Standards really necessary? While some lawyers will find that they so readily conform with the Standards that they don’t seem necessary, based on the experience in the Professional Responsibility department, we would conclude that these Standards are, in fact, necessary.

3. I object to carrying a Blackberry! This is part of the “below the line” recommendations and is **not** a Standard.

4. Overall these standards seem reasoned, well articulated and effective to ensure high quality common service delivery to clients. However, No 12 and 3 could be better articulated. The Committee believes these are clear already.

5. These Standards appear to be only a summary, or reminder, of minimum existing duties and should provide for the Standard by which a duty is to be carried out. This is true. The Standard does articulate in one place the minimum existing duties of a lawyer as they relate to client service. But in this context, “how” that might be carried out can vary significantly. The Committee has tried to provide guidance in this regard “below the line” but does not intend to mandate a specific method by which these Standards should be fulfilled.

Other comments (grammatical changes / spelling mistakes / amending quotations) were changed in the version being presented but do not substantively change the content of the Standard.

CONCLUDING COMMENTS:

All members of the LOMC appreciate that there are many lawyers conducting legal affairs within the Province to whom some of these best practices might not or will not apply. Government lawyers, Crown Prosecutors, Legal Aid lawyers and in-house counsel all naturally spring to mind.

The LOMC’s mandate is, however, to “law office” management and not the other myriad areas of endeavour in which lawyers might find themselves acting and serving. Accordingly, these Client Service Standards have been tailored to private practice; but with the recognition that some ethical and practice standards cut across all lawyers.

Exhibits/Appendices:

Proposed Standard on Client Service

assignments on the basis of what they offer by way of client service and what their firms publicize as their client service standards.