



December 6<sup>th</sup>, 2021

Ms. Leah Kosokowsky  
Chief Executive Officer  
Law Society of Manitoba

Dear Madam:

Re: Request for Amendments to Commentary Related to Rules 3.2-2A and 3.2-2B of the *Code of Professional Conduct*

We are writing with respect to Rules 3.2-2A and 3.2-2B of the *Code of Professional Conduct*, which deal with the duty of lawyers to advise clients of their language rights.

These provisions were incorporated in the Law Society of Manitoba's *Code of Professional Conduct* on April 9, 2015. Their wording is entirely based on the corresponding rules found in the *Model Code of Professional Conduct* adopted by the Federation of Law Societies of Canada.

The commentary related to Rules 3.2-2A and 3.2-2B provides a very concise and generic overview of language rights at the national level. In our view, its content would be greatly enhanced if it also identified the main components of the constitutional, statutory and policy framework applying specifically to Manitoba regarding the use of English and French in the area of law and justice. In addition, we believe that the language guarantees recently added to *The Divorce Act* should be taken into account.

We therefore respectfully request that the Law Society of Manitoba consider formally passing the attached proposed amendments which, by updating and more fully contextualizing the principles underlying Rules 3.2-2A and 3.2-2B, provide clearer guidance to the Law Society and practitioners alike.

We thank you in advance for your cooperation in this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read 'G. Heckman', is written over a light blue rectangular background.

Professor Gerald Heckman  
Chair of the Board of Directors

Encl. (1)

**PROPOSED AMENDMENTS TO COMMENTARY RELATED TO RULES 3.2-2A AND 3.2-2B  
OF THE CODE OF PROFESSIONAL CONDUCT**

<b>Language Rights</b>	<b>Droits linguistiques</b>
3.2-2A A lawyer must, when appropriate, advise a client of the client’s language rights, including the right to proceed in the official language of the client’s choice.	3.2-2A L’avocat est tenu, s’il y a lieu, d’informer son client de ses droits linguistiques, notamment de celui de faire valoir ses droits dans la langue officielle de son choix.
3.2-2B Where a client wishes to retain a lawyer for representation in the official language of the client’s choice, the lawyer must not undertake the matter unless the lawyer is competent to provide the required services in that language.	3.2-2B Lorsqu’un client souhaite retenir les services d’un avocat pour le représenter dans la langue officielle qu’il a choisie, il est interdit à l’avocat d’accepter le mandat s’il ne possède pas les compétences linguistiques nécessaires.
<b>Commentary</b>	<b>Commentaire</b>
[1] The lawyer should advise the client of the client’s language rights as soon as possible.	[1] L’avocat est tenu d’aviser son client de ses droits linguistiques le plus tôt possible.
<p>[2] The choice of official language is that of the client not the lawyer. The lawyer should be aware of relevant statutory and Constitutional law relating to language rights including the Canadian Charter of Rights and Freedoms, s. 19(1), <del>and</del> Part XVII of the Criminal Code <del>and</del> <a href="#">section 23.2 of The Divorce Act</a> regarding language rights in courts under federal jurisdiction and in criminal <del>and</del> <a href="#">divorce</a> proceedings. The lawyer should also be aware that provincial or territorial legislation may provide additional language rights, including in relation to aboriginal languages.</p> <p><a href="#">In Manitoba, legislation, policies and guidelines pertaining to the use of English and French in the area of law and justice include:</a></p> <ul style="list-style-type: none"> <li>• <a href="#">Section 23 of The Manitoba Act, 1870;</a></li> <li>• <a href="#">The Manitoba Francophone Community Enhancement and Support Act;</a></li> </ul>	<p>[2] Le choix de la langue officielle est celui du client, et non de l’avocat. L’avocat est tenu de connaître la législation et le droit constitutionnel en matière de droits linguistiques, notamment le <a href="#">paragraphe 19(1) de la Charte canadienne des droits et libertés</a>, <del>et</del> <a href="#">la partie XVII du Code criminel et l’article 23.2 de la Loi sur le divorce</a> concernant les droits linguistiques devant les tribunaux relevant de la compétence fédérale, <del>et dans une</del> <a href="#">les instances criminelles et dans les affaires de divorce</a>. Il doit également savoir que les lois provinciales ou territoriales peuvent prévoir d’autres droits linguistiques, notamment des droits relatifs aux langues autochtones.</p> <p><a href="#">Au Manitoba, la législation, les politiques et les lignes directrices concernant l’emploi du français et de l’anglais dans le domaine du droit et de la justice comportent entre autres ce qui suit :</a></p> <ul style="list-style-type: none"> <li>• <a href="#">l’article 23 de la Loi de 1870 sur le Manitoba;</a></li> <li>• <a href="#">la Loi sur l’appui à l’épanouissement de la francophonie manitobaine;</a></li> </ul>

<ul style="list-style-type: none"> <li>• Part III of the <i>Court of Appeal Rules</i> [Manitoba Regulation 555/88 R];</li> <li>• Translation and Interpretation Guidelines of Manitoba Courts;</li> <li>• The Government of Manitoba’s French Language Services Policy; and</li> <li>• The Statement on the Appointment of a Greater Number of Bilingual Individuals to Quasi-Judicial Tribunals in Manitoba.</li> </ul>	<ul style="list-style-type: none"> <li>• la partie III des <i>Règles de la Cour d’appel</i> [Règlement du Manitoba 555/88 R];</li> <li>• les lignes directrices sur les services de traduction et d’interprétation offerts par les tribunaux judiciaires du Manitoba;</li> <li>• la politique sur les services en français du gouvernement du Manitoba;</li> <li>• l’énoncé sur la nomination d’un plus grand nombre de personnes bilingues aux tribunaux quasi-judiciaires du Manitoba.</li> </ul>
<p>[3] When a lawyer considers whether to provide the required services in the official language chosen by the client, the lawyer should carefully consider whether it is possible to render those services in a competent manner as required by Rule 3.1-2 and related Commentary.</p>	<p>[3] Pour décider s’il fournira les services nécessaires dans la langue officielle choisie par son client, l’avocat doit sérieusement évaluer s’il peut les fournir d’une façon compétente comme l’exige l’article 3.1-2 et le commentaire qui l’accompagne.</p>