

BC Family Unbundled Legal Services Project Unbundling Toolkit for Lawyers and Paralegals

How to use the Retainer letter templates

The retainer letter templates included in the Toolkit were developed by a working group with the support and assistance of the Law Society of BC. The working group was composed of family lawyers, a representative of the Law Society, a member of the public and the manager of the BC Family Unbundled Legal Services Project. Feedback on the templates was sought and obtained from other BC family lawyers before publishing the final versions.

There are two forms of template retainer letter and three versions of the Schedule A to be attached to the ongoing consultation letter:

1. Template retainer letter – one-time limited consultation
2. Template retainer letter – ongoing limited consultation
3. Schedule A checklists:
 - a. Long list form
 - b. Drafting documents example
 - c. Mediation support example

While it is always advisable to use a written retainer letter, it is essential when providing unbundled (or limited scope retainer) legal services (Rule 3.2-1.1). In order to avoid confusion and future concerns and complaints, both the lawyer and client must be very clear about the scope of the services to be provided by the lawyer. This includes:

- what the lawyer will do
- what the lawyer will NOT do and
- what the client will do

We know that most complaints and claims against family lawyers stem from poor communication and lack of clarity about who was doing what, when and for what cost. A good retainer letter addresses all of these issues upfront. Ideally, the lawyer and client will review the retainer letter together to ensure that all points are clear. It is particularly important that the Schedule A checklist be reviewed line by line, discussed and decisions made and recorded about who will do what services or tasks. This collaborative approach will help to build trust and avoid (or help to resolve) future misunderstandings.

The template retainer letters are in a format that allows you to customize the letter to meet the unique needs of your client and practice. It takes a “fill in the blanks” approach and provides some options throughout. You should pay particular attention to Schedule A, and create a list of services that best describes and limits the type of services you will be providing (and not providing). The templates contain suggested wording only. Each item should be as specific as possible. For example, if you are retained only to appear as counsel in a chambers hearing on August 31st, make sure that all of the items relate specifically to that event. If you are retained only to provide independent legal advice on a

mediation agreement, then limit Schedule A to only those tasks related to that service. As you become more familiar with the limited scope retainer approach you will likely wish to create your own templates.

When you are ready to take your first unbundled client, spend some time before your first meeting to customize the appropriate template retainer letter and Schedule A and have a draft ready for your meeting.

Not all clients and not all legal matters are appropriate for an unbundled approach. Your first obligation is to carefully assess whether, in that unique circumstance, it is possible for you to render the services competently and in accordance with your professional obligations. See BC Code rules 3.1-2 (and in particular commentary [7.1]), 3.2-1.1, 7.2-6, and 7.2-6.1.

A detailed intake process is recommended. In the Toolkit you will find some suggested questions to add to your client intake form. Some of the factors to consider include:

- Your client’s organizational skills and capacity
- Your client’s mental and emotional health
- The capacity of your client to self-represent including literacy and language issues
- Your client’s ability to make this kind of collaborative arrangement work
- The complexity of the matter
- Any time limits or imminent deadlines
- Whether your client has realistic expectations
- The risk that the client will not (or is not able to) share all relevant information

During the intake process try to identify any potential collateral issues that your client may not have raised or be aware of as potential issues. Add them to Schedule A for discussion and allocation of responsibility.

Document your decision whether to proceed and place it in your file.

During your meeting with your client review and complete the retainer letter and Schedule A. Take the time to go through each item carefully. If your client is responsible for an item on the list, consider offering information or web links that might focus the client’s activities.

Ensure that the letter and Schedule A is signed and returned by your client. You are then able to proceed to carry out the services for which you are responsible.

If your client asks you to take on services that are outside of the agreed scope resist the temptation to take those on without entering into a new limited scope retainer agreement. “Scope creep” can lead to misunderstandings and complaints down the road.

At the conclusion of your services it is advisable to send to your client a letter confirming that you have fulfilled the scope of services that were set out in the limited scope retainer letter. This serves two



purposes: (1) to protect you should your client later assert that you were responsible to complete an additional step; and (2) to protect your client by reminding him or her of the responsibility to complete the legal matter from that point. It might include a checklist, time line, or strategy for the client to follow from then on.

This is just version 1.0 of the Unbundling Toolkit for Lawyers. We will be updating and adding to it over the next several months. Your feedback would be most appreciated. Please send it to: kari.boyle@shaw.ca.