

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

Unbundling FAQs for Lawyers and Paralegals

1. What is unbundling?

- a. Many people can afford to pay something for legal services; they often cannot afford the cost of the full representation model.
- b. In 2008, the Law Society of BC Unbundling of Legal Services Task Force found that unbundling could be a valuable tool for enhancing access to justice by allowing people to retain lawyers for discrete services, and in accordance with their financial means. The Code was amended in 2011. However, in 2016 few BC family lawyers offer unbundled legal services. Those that do often offer them on an ad hoc basis and rarely advertise this approach. This makes it very difficult for clients to find these lawyers when they need them.
- c. Unbundling (also called “limited scope retainer”, “limited scope representation”, a la carte legal services, discrete task representation etc.) is an approach to delivering legal services in which the lawyer and client break down the client’s legal matter into a list of discrete tasks and provides legal services for only a portion of those tasks. The client accepts the responsibility for entire matter and for performing the other tasks on the list.
- d. If we consider “full scope” representation as a “bundle” of legal services, the idea of “unbundling” involves splitting apart the traditional bundle into smaller, discrete tasks.
- e. The Law Society of BC defines unbundling as follows:

“Unbundling” refers to a situation where a lawyer provides limited scope services to a client, rather than providing full scope legal services... Limited scope legal services refers to a situation where a lawyer performs discrete tasks for a client, and the client handles other matters that, in a full service retainer, would form part of the services the lawyer would provide.

-Report of the Unbundling of Legal Services Task Force, LSBC, April 2008¹

- f. Unbundling is not new. In a [recent BC survey](#), 76% of lawyers said they provided unbundled legal services. This is important because it shows that unbundled legal services are not new – lawyers have long provided legal services on this basis in a variety of practice contexts. Consider providing collaborative law services, giving independent legal advice on a separation agreement or a mortgage, providing a second opinion on a difficult legal issue, providing an initial consultation on a potential claim (including a CBABC Lawyer Referral matter), advising in the role of duty counsel. Some respondents noted that they didn’t think of these roles as being “unbundling”. It may be that lawyers

¹ Task Force report archived at: <https://perma.cc/9466-S62B>

usually offer unbundled services on an ad hoc basis and do not consider them to be a formal part of the lawyer's practice. Perhaps we are now seeing a major shift in the system. With the increasing number of family members who need legal assistance and who cannot afford to hire a lawyer on a full-representation basis the demand has increased to the extent that unbundled legal services could form a solid part of the lawyer's practice.

- g. Unbundling is one piece of the Access to Justice puzzle in Canada. It aims to make legal services more affordable for the public.
- h. Examples of unbundled legal services in family matters include:
 - i. The initial consultation meeting
 - ii. Providing strategic advice including various resolution options
 - iii. Drafting specific documents (pleadings, arguments, affidavits, Orders)
 - iv. Conducting legal research
 - v. Appearing in court for one application/hearing
 - vi. Coaching on process, strategy, negotiation or participation in court
 - vii. Representation during a mediation
 - viii. Providing independent legal advice on a mediation agreement
 - ix. Drafting an agreement coming out of a mediation
 - x. Providing legal advice before, during or after a mediation session
 - xi. Organizing documents
 - xii. Etc.

2. What are the benefits for family lawyers?

- a. An unbundling approach offers many benefits to family lawyers. Done well, it is simple, lucrative and enjoyable. Benefits include:
- b. Business Opportunities:
 - i. Unbundling expands the lawyer's potential market share. It may be "a tool to facilitate access to justice in a sustainable fashion by providing meaningful legal services to a much larger segment of our society while allowing the lawyer to make a good living."²
 - ii. Unbundling taps into a potentially huge market of people who are no one's clients. Approximately 41% of all marriages end in divorce. Only a small portion of people can afford to hire a lawyer using the full representation model.
 - iii. In other jurisdictions such as California, unbundling represents an effective niche marketing tool for family lawyers interested in expanding their practice.
 - iv. Unbundling also offers an opportunity for young or inexperienced lawyers to gain experience in their field.
- c. New, tailored business models:

² Robert Harvie, "Limited Scope Retainers – Why Me, Why Now?", article included in "The Limited Scope Retainer", CBA Alberta Branch, at page 6. <https://www.pbla.ca/resourcebank/attachment.244743>

- i. It is a way for lawyers to take control over changes in the legal marketplace and to meet a significant consumer need for access to justice by adapting the law practice business model. In the words of Jordan Furlong:

*The modern view of clients — one they share themselves — emphasizes partnership over patronization, collaboration over command-and-control. Many lawyer-client relationships still fit well within the traditional model; but many more do not, and they need a better option. Limited scope retainers make for a very good start.*³
 - ii. Unbundling allows lawyers to provide a more sophisticated and structured approach to the problem solving process.⁴ It is a more efficient way of planning and delivering legal services.⁵
 - iii. Unbundling fits well with a desire for a part-time practice.
 - iv. It also suits a virtual practice approach. Lawyers can develop a business model that focuses on providing unbundled legal services using technology tools.
- d. Potentially higher revenue:
- i. Creative methods of providing unbundled legal services can result in higher and more stable lawyer revenue.⁶
 - ii. Use of alternative billing methods frees lawyers from being “slaves to the artificiality of the billable hour”. As stated by Edward Gallagher:

*We had (and still have) an intense dislike of cost-plus hourly billing as a model for law firm pricing. LSRs provide an opportunity for pricing based on value of the services being rendered, rather than time.*⁷
 - iii. Unbundling presents opportunities to price the work using creative pricing strategies. Using flat fees and ‘pay as you go’ methods create fewer financial issues and few accounts receivable.
 - iv. Similarly, unbundling can be more profitable than the usual hourly billing method. Pricing can be based on value rather than cost-plus hourly billing.
- e. Managed exposure to risk:
- i. There is no evidence to suggest that unbundling involves any greater risk of malpractice suits and complaints than the traditional full representation model.

³ Jordan Furlong, Foreword to Kimbro, “Limited Scope Legal Services – Unbundling and the Self-Help Client”, ABA Law Practice Management Section, 2012.

⁴ Cochran, Robert F. Jr. (2009) "Legal Ethics and Collaborative Practice Ethics," Hofstra Law Review: Vol.38:Iss. 2, Article 4. Available at: <http://scholarlycommons.law.hofstra.edu/hlr/vol38/iss2/4> .

⁵ Edward Gallagher, “Limited Scope Retainers in a Small Practice”, article included in “The Limited Scope Retainer”, CBA Alberta Branch, at page 29. <https://www.pbla.ca/resourcebank/attachment.244743>

⁶ Kristen M. Blankley, Adding By Subtracting: How Limited Scope Agreements for Dispute Resolution Representation Can Increase Access to Attorney Services, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2251421 at page 36.

⁷ Edward Gallagher, “Limited Scope Retainers in a Small Practice”, article included in “The Limited Scope Retainer”, CBA Alberta Branch, at page 29. <https://www.pbla.ca/resourcebank/attachment.244743>

In fact, the requirement to use a written retainer letter and agreed-upon checklist of activities will likely reduce communication issues and other misunderstandings.⁸

- f. Improved Lifestyle and Satisfaction:
 - i. It can relieve lawyers from the “self-imposed burden of omnipotence”. As Jordan Furlong said: “Our intense dislike of risk and our fervent striving for control has left us vulnerable to taking on more responsibility for our clients’ outcomes than we often should”.⁹
 - ii. It can lead to a better lifestyle. Unbundled clients tend to be very appreciative for the assistance you provide. Unbundled assignments tend to be much shorter and discrete; there is a beginning and an end. They do not extend for years as do some complex litigation matters. You have the ability to limit the scope of your services both in the type and number of activities and the timeframe for their completion. If something is outside of your comfort zone you do not have to accept it.
 - iii. Unbundled lawyers have reported a higher level of personal satisfaction with their practices and reduced stress levels. As Robert Harvie QC said:

I give certain responsibilities back to my clients. I force them to make the difficult decisions. I provide them with guidance and advice. But at the end of the day, whether the client settles or litigates is up to them. While this may sound callous to some, I think it reflects what the proper relationship between a lawyer and his or her client should be. And since adopting this practice -- of forcing control and responsibility over critical decision back upon the client -- I find myself sleeping better at night, arguing less with opposing counsel, and by and large, having happier clients.

- g. A solid contribution to access to justice for BC families.

3. What are the benefits for the public?

- a. Increases access to justice:
 - i. The access to justice crisis is real. Many BC families cannot afford to hire a lawyer using a “full representation model”. Others start out on their separation or divorce journey represented by a lawyer but they run out of money.

..an astonishing 53% of my respondents - all of whom were now representing themselves in either family or civil court - had at an earlier point retained counsel but had run out of money to pay their legal bills. 86% of these now

⁸ Robert Harvie, supra, at page 7. Dr. Julie Macfarlane, “Making it Legal: Some Simple Steps for Moving Unbundling to the Next Stage”, July 12, 2016, <https://representingyourselfcanada.com/2016/07/12/making-it-legal-some-simple-steps-for-moving-unbundling-to-the-next-stage/>

⁹ Jordan Furlong, Foreword to Kimbro, “Limited Scope Legal Services – Unbundling and the Self-Help Client”, ABA Law Practice Management Section, 2012.

*“unrepresented” individuals continued to look for legal advice or assistance. This usually meant that they were looking for access to a pro bono or subsidized service (Legal Aid, duty counsel) or find a private lawyer who would “unbundle”.*¹⁰

- ii. The problem is particularly acute in family disputes arising from separation and divorce. Self-representation rates exceed 50% and some reports are of percentages in the 80% range in family court.
 - iii. Many families are either ineligible for “free” legal services through Legal Services Society family duty counsel or Family LawLine, pro bono clinics etc., or they have already used up their hours of entitlement.
 - iv. Many people can afford to pay something; they cannot afford the full representation approach.
- b. Price Predictability: Family members achieve price certainty or predictability. They are asking for alternative fee arrangements that will enable them to know in advance what it will cost and budget accordingly. They receive increased value for money.
 - c. Improved Outcomes: Without some form of legal advice or representation, most self-represented parties are at a significant disadvantage, particularly in the court system.¹¹
 - d. Increased Voice: The structured unbundling process provides family members with increased participation and “voice” in the dispute resolution process, which leads to greater process satisfaction.¹²
 - e. Enhanced Empowerment: Family members experience increased empowerment and autonomy. Family members increasingly desire greater involvement in and control over their legal matters. An unbundled practice model enables families to drive the course of their legal matter, leveraging only those services they truly need without feeling that they have relinquished control of their matter including price.
 - f. Improved confidence in the process and outcome.
 - g. Improved access to settlement processes:
 - i. Use of unbundled legal services can facilitate informed settlements.
 - ii. It is possible that if Judges knew that parties had access to unbundled legal services to support them in a mediation process they may be more likely to refer to mediation.
 - h. Access to Tailored Services: Unbundling can provide families with the kind of assistance that best meets their underlying goals. Most people want to resolve their issues quickly and effectively and unbundling can include assistance with settlement-focused

¹⁰ Dr. Julie Macfarlane, “Getting the Public and the Profession on the Same Page about Unbundled Legal Services”, an article included in “The Limited Scope Retainer”, CBA Alberta Branch, at page 6.

<https://www.pbla.ca/resourcebank/attachment.244743>

¹¹ Dr. Julie Macfarlane, “Finally, Canadian Data on Case Outcomes: SRL vs. Represented Parties, April 18, 2016 <https://representingyourselfcanada.com/2016/04/18/finally-canadian-data-on-case-outcomes-srl-vs-represented-parties/>

¹² Blankley, supra.

processes (such as mediation and collaborative law) as well as litigation if needed. They receive services that are specially tailored to meet their needs.

- i. Balancing Power: Access to an unbundled lawyer assists in dealing with power imbalances.

4. What are the benefits for the courts and the justice system?

- a. Improved Outcomes for Litigants: Unbundled legal services can lead to improved outcomes for self-represented litigants. Research shows that outcomes for self-represented parties are significantly worse than for represented parties.¹³
- b. Improved Court Efficiency:
 - i. Without legal advice or representation, some family members will come to court uninformed and overwhelmed, seeking substantial help from Judges and court staff. Unbundled legal services can provide a partial answer to these challenges.
 - ii. Unbundled assistance to prepare the litigant's pleadings and other materials will result in higher quality documents and improve court efficiency.
 - iii. Unbundled lawyers can provide assistance in presenting evidence, rules of evidence, and other procedural aspects.
 - iv. Unbundled lawyers provide somewhere for the court and registry staff to refer parties who need help.
 - v. Unbundled legal services can result in reduced wait times, reduced demands on judicial resources through reduced volumes of applications and shorter hearings and trials.
 - vi. Unbundled legal services can also reduce demands on court services / registry personnel.
 - vii. Unbundled legal services can alleviate some of the pressure that Judges experience in working with self-represented litigants.
- c. Improved access to settlement processes:
 - i. Use of unbundled legal services can facilitate informed settlements.
 - ii. It is possible that if Judges knew that parties had access to unbundled legal services to support them in a mediation process they may be more likely to refer to mediation.
- d. Improved Public Perception of the Justice System: Self-represented litigants often leave viewing the court system as unfair and unresponsive. Access to unbundled legal services will lead to improved public perception of the justice system.

5. Is there a market for unbundled legal services?

¹³ Dr. Julie Macfarlane, "Finally, Canadian Data on Case Outcomes: SRL vs. Represented Parties, April 18, 2016 <https://representingyourselfcanada.com/2016/04/18/finally-canadian-data-on-case-outcomes-srl-vs-represented-parties/>

- a. The access to justice crisis has created a large untapped market of people who cannot afford full representation.
- b. Unbundling expands the lawyer's potential market share. It may be "a tool to facilitate access to justice in a sustainable fashion by providing meaningful legal services to a much larger segment of our society while allowing the lawyer to make a good living."¹⁴
- c. Unbundling taps into a potentially huge market of people who are no one's clients. Approximately 41% of all marriages end in divorce. Only a small portion of people can afford to hire a lawyer using the full representation model.

6. Is unbundling risky for lawyers?

- a. Some lawyers express concern that unbundling will expose them to risk of claims or complaints to the Law Society. Other jurisdictions have been promoting and using unbundled legal services for over a decade and there is no evidence to suggest that unbundling involves any greater risk of malpractice suits and complaints than the traditional full representation model. In fact, the requirement to use a written retainer letter and agreed-upon checklist of activities will reduce communication issues and other misunderstandings.¹⁵
- b. In the Toolkit v 1.1 you will find a letter of support dated December 15, 2016 from David Crossin Q.C., the former President of the Law Society of BC, that addresses this issue and encourages lawyers to provide unbundled legal services.

7. How can I provide unbundled legal services safely and effectively?

- a. Start by considering whether unbundling is right for you and your firm. Are the types of matters you handle capable of being broken down into separate tasks with a clear structure to the progress of the tasks and matter as a whole?
- b. Then consider your clients and the clients you wish to serve. Limitations on the scope of representation must be reasonable, and the firm's clients must be able to follow your guidance as necessary to complete their legal needs.
- c. Review and become familiar with the applicable rules in the Code of Conduct. We provide a document listing the applicable rules in the Toolkit.
- d. Study and use the Family Lawyer Toolkit including the template retainer letters and checklists. Incorporate them into your workflow including your client intake process.
- e. Seek help when you need it. If you need help interpreting the rules in the Code of Conduct, contact the Law Society's [Practice Advice Department](#).

¹⁴ Harvie, supra.

¹⁵ Robert Harvie, supra, at page 7. Dr. Julie Macfarlane, "Making it Legal: Some Simple Steps for Moving Unbundling to the Next Stage", July 12, 2016, <https://representingyourselfcanada.com/2016/07/12/making-it-legal-some-simple-steps-for-moving-unbundling-to-the-next-stage/>

8. Does the Law Society of BC support unbundling?

- a. The Law Society of BC supports unbundled legal services. In 2013, the Benchers approved new rules in the Code of Conduct to recognize and encourage the practice. We provide a document listing the applicable rules in the Toolkit.
- b. In 2015, the Law Society supported a project funded by the Law Foundation of BC and run by Mediate BC Society with the purpose of encouraging more family lawyers to offer and promote unbundled legal services. That project now dovetails with the Unbundling Initiative of Access to Justice BC.
- c. In early 2016, the President of the Law Society, David Crossin Q.C., penned two blog posts supporting unbundling, particularly for family matters:
https://www.lawsociety.bc.ca/newsroom/president.cfm?quaternary_id=90#c4203.
- d. In June of 2016 the Benchers' Bulletin featured an article about unbundling:
https://www.lawsociety.bc.ca/docs/bulletin/BB_2016-02_Summer.pdf.
- e. Version 1.1 of the Toolkit includes a letter dated December 15, 2016 from David Crossin, Q.C., former President of the Law Society of BC, expressing support for unbundling.

9. What are the applicable rules of professional conduct for unbundling in BC?

- a. In 2013, the Benchers approved new rules in the Code of Conduct to recognize and encourage the practice.
- b. We provide a document listing the applicable rules in the Toolkit.

10. Is unbundling right for my firm?

- a. Start by considering whether unbundling is right for you and your firm. Are the types of matters you handle capable of being broken down into separate tasks with a clear structure to the progress of the tasks and matter as a whole?
- b. Then consider your clients and the clients you wish to serve. Limitations on the scope of representation must be reasonable, and the firm's clients must be able to follow your guidance as necessary to complete their legal needs.
- c. Consider whether you and your firm will be able to comply with the applicable rules in the Code of Conduct. We provide a document listing the applicable rules in the Toolkit.
- d. Study the Family Lawyer Toolkit including the template retainer letters and checklists. Consider how you would incorporate them into your workflow including your client intake process.

11. Why should I join the BC Roster for Unbundling Lawyers and Paralegals?

- a. Access to Justice BC ("A2JBC") and Mediate BC (through its Law Foundation of BC unbundling project) are working to encourage more BC family lawyers and paralegals to offer and promote unbundled legal services to support families experiencing separation and divorce.

- b. A majority of the BC family lawyers who responded to the [Unbundling Project survey](#) told us that they already provide some form of unbundled legal service. However, few actively promote these services to the public and families have significant difficulty finding an unbundled lawyer to assist them.
- c. You can help to fill that gap. Simply click on the “sign up” button here: <http://www.courthouselibrary.ca/practice/familylaw/unbundling/>. Complete the survey and submit it. Your name and a description of your services will be added to:
 - i. The Clicklaw HelpMap: <http://www.clicklaw.bc.ca/helpmap/search?k=unbundling&so=r>
 - ii. The BC Family Unbundling Roster: <https://sites.google.com/view/bfur>
- d. The benefits to you and your firm include:
 - i. Increased business opportunities
 - ii. New, tailored business models
 - iii. Potentially increased revenue
 - iv. Managed exposure to risk
 - v. Improved lifestyle and satisfaction
 - vi. A solid contribution to access to justice
- e. For more details on each of these benefits click on the FAQ “What are the benefits for family lawyers?”
- f. As an added bonus, with your consent you have the option of agreeing to allow us to share your name and contact information with a Canadian national database of lawyers providing unbundled legal services of all types. This national database is published by the [National Self-Represented Litigants Project](#) led by Dr. Julie Macfarlane. Inclusion in this database will give you and your firm national exposure to families seeking unbundled legal services for BC-related matters.

12. Why do I need a written retainer agreement?

- a. 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:
 - i. what the lawyer will do
 - ii. what the lawyer will NOT do and
 - iii. what the client will do

13. What should the written retainer letter look like?

- a. Use the templates for the letters and Schedule A checklists in the Toolkit.

14. Is unbundling appropriate for every client or situation?

- a. No. Refer to the How to Use the Letter Templates and Client Intake for Unbundling tools in the Toolkit.

15. What do I do if the client asks me to take on additional work?

- a. 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.
- b. Use the template retainer letters and Schedule A checklists in the Toolkit to create a new arrangement.

16. How does unbundling affect my duties of competence and ethical conduct?

- a. Lawyers providing unbundled legal services have the same duties of competence and ethical conduct as those who provide full-representation services.
- b. Commentary 7.1 of Rule 3.1-2 states:

[7.1] 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 3.2-1.1.

17. When should I tell opposing counsel that I am working on an unbundled basis?

- a. If the other party or parties are represented by counsel, the Code includes special provisions applicable to unbundled legal services.
- b. The Commentary to Rule 3.2-1.1 includes the following:

[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. ...

[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 7.2-6.1).

[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.

- c. Rule 7.2-6 and 7.2-6.1 provides:

Subject to rules 7.2-6.1 and 7.2-7, if a person is represented by a lawyer in respect of a matter, another lawyer must not, except through or with the consent of the person's lawyer:

- (a) approach, communicate or deal with the person on the matter; or*
- (b) attempt to negotiate or compromise the matter directly with the person.*

[amended 09/2013]

7.2-6.1 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 7.2-6.1 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.

18. Should I advise the court that I am working on an unbundled basis?

- a. There is no specific requirement in the Code for you to disclose to the Court your involvement on an unbundled basis. However, Rule 3.2-1.1 Commentary paragraph [3] provides:

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.