

De-mystifying Unbundled Legal Services: Why Family Law Lawyers Should Embrace It and What to Avoid

By Zahra H. Jimale

Unbundled or piecemeal legal services are legal services delivered by a lawyer in a la carte manner where the tasks associated with the client's legal matter are broken down into specific tasks and the lawyer performs one or more of the specific tasks that the client requires assistance with, while the client remains in charge of the case and the tasks not being performed by the lawyer. This allows clients the opportunity to retain control of their case, pay only for specific legal services that they can afford, receive legal advice to make informed decisions about their case and access legal services to protect their legal interests. This approach to the delivery of legal services is critical now more than ever as more and more individuals are representing themselves in separation and divorce cases.

Many lawyers, family law lawyers in particular, are reluctant to provide and promote unbundled legal services. I was one of these lawyers. I was concerned that providing piecemeal legal services would be a disservice to my client, that it was unprofessional and increased risk of professional liability. I believed that as a family law lawyer assisting a client with parts of her/his case and not assisting them with their entire case would harm or prejudice the client's legal matter. I now believe providing unbundled legal services is critical to improving access to justice for many that cannot afford a lawyer on a full retainer, it is necessary in adapting to the changing legal industry landscape, and there are steps that can be taken to ensure the services are provided in a way that protects the client and the lawyer. I now provide and promote unbundled legal services as a family law lawyer and a collaborative divorce lawyer, which is by definition a type of unbundled legal service. In fact most of my current files are limited scope retainer files where I provide unbundled legal services, such as legal advice and written opinion, case strategizing, coaching, document preparation, review and editing, and attending discoveries, hearings, mediation and arbitration. Unbundled legal services can be provided at any stage of a legal matter; prior to the start of a court action, during negotiations, mediations, arbitration and hearings.

Research shows that most self-represented litigants are looking for affordable legal services, they are not simply choosing to represent themselves; they are doing it out of necessity. Most self-represented litigants wish they had some legal advice and representation, even if that is on a limited retainer basis. Even those that prefer handling their own legal matter want to have better understanding of their legal matter and recognize that receiving legal advice and services is necessary to protect their legal interests. Providing unbundled legal services will provide self-represented litigants the opportunity to make informed decisions about their legal matter within their financial means. However, it is critical that there is clear understanding between the lawyer and client and that these services are provided in a measured and thoughtful manner. Unbundled legal services do not and must not mean less competent or low quality legal services. It is also important to recognize that unbundled legal services may not be appropriate for some legal matters and clients, which is why the intake meeting must be used to make this determination.

This article is intended to provide information on how to best engage in unbundled legal services arrangement by way of "do's" and "don'ts" for both lawyers and clients who are

contemplating this arrangement. This is by no means an exhaustive list, just some of the practices that I have found helpful.

	LAWYER	CLIENT
D O' S	<ul style="list-style-type: none"> • Do conduct a full intake process that includes discussion about whether unbundled legal services are appropriate and if so which services will be performed by the lawyer. This process should be collaboration between the lawyer and the client where the client is left informed about their legal matter and as a result empowered to make informed decisions and take action. • Do execute a written limited retainer agreement with the client that clearly sets out which services will be provided and which services will not be provided. • Do advise, after discussing with client, opposing lawyer/party of your limited retainer and what they should communicate with you about and on which aspects of the matter they should communicate directly with the client. • Do advise the court, if you are attending court, of your limited retainer making it clear you are not lawyer of record. • Do ensure your signature on agreements or court orders reflects the limited retainer. This is important so that the court and other lawyers that may be involved know the extent of your involvement. You can do this by adding to your signature that nature of your retainer – for example on a court order I might state under my signature “I am not counsel of record, my retainer is limited to the court application that gave rise to this order” • Do make sure your client understands your role throughout the retainer. • Do send the client a completion letter when your role on each retainer agreement comes to an end. 	<ul style="list-style-type: none"> • Do make the best of the initial intake meeting with the lawyer and ask questions to make sure you understand your legal interests and obligations fully. • Do bring with you all relevant documents and information relating to your legal matter to the initial meeting with the lawyer, so that you and the lawyer can meaningfully discuss your legal matter. • Do make sure your lawyer and you understand each other's roles clearly. • Do keep your lawyer informed with respect to the specific tasks that he/she is providing legal services on. For example if your lawyer has helped you reach an agreement and the agreement falls through because of another issue in your case, then make sure you share that with your lawyer. • Do speak with your lawyer if you have any

		<p>concerns about the services being provided.</p> <ul style="list-style-type: none"> • Do make sure you provide your lawyer with all information and documents that are relevant to the task(s) she is assisting you with.
D O N' T 'S	<ul style="list-style-type: none"> • Don't take on a legal matter on a limited retainer unless you are confident your involvement will not have an adverse impact on other claims in the case. If you believe that there might be adverse impact discuss it with the client and get their instructions on how to proceed in writing. • Don't step out of the boundaries of the limited retainer. If your client wants you to do another related or unrelated matter do a new limited retainer agreement for the new task or issue. 	<ul style="list-style-type: none"> • Don't expect your lawyer to communicate with the opposing lawyer/party on any other tasks but the one(s) set out in the limited retainer agreement. You are still responsible for the rest of your case. • Don't make assumptions about what your lawyer knows about your legal matter, share all relevant information and ask questions.

For more information, resources and a list of lawyers providing unbundled legal services visit <http://www.courthouselibrary.ca/practice/FamilyLaw.aspx>.

For those lawyers interested in joining the BC Family Unbundling Roster please register at <https://www.surveymonkey.com/r/NF7877J>.

I hope this information and the listed resources will encourage family law lawyers to provide unbundled legal services to improve access to justice and embrace the changing legal industry landscape where the provision of legal services do not need to be an all-or-none proposition.