

## **BC Family Unbundled Legal Services Project Lawyer Unbundling Toolkit**

### **What is “Unbundling”?**

*“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 2008

Different terms are used to describe “unbundled legal services” including “limited scope representation”, “limited scope retainer” and “discrete task representation”. We use “unbundling” to describe a lawyer providing legal services for a part, rather than the whole, of the client’s legal matter. The retainer may be for one or more discrete tasks (vertical unbundling) or for one or more specific issues (horizontal unbundling). For example, rather than retaining a lawyer to represent the person in their family matter from beginning to end (usually on an hourly rate basis), the person may wish to retain a lawyer ONLY to help them prepare for and participate in a negotiation or mediation (a legal advice and legal coaching role) OR to provide them with independent legal advice on an agreement reached through mediation OR to prepare a document for use in court OR to represent the person at one court hearing.

Unbundling is not new; lawyers have been providing unbundled services for many decades in a wide variety of practice areas. In the family area, providing independent legal advice on a mediation agreement is an unbundled service. Many family lawyers provide a free or flat fee-based initial consultation meeting with people who need guidance with respect to their family legal problems. That, too, is an unbundled legal service.

The Law Society of BC amended its Rules in 2013 to specifically permit unbundling. Despite that critical step, relatively few family lawyers offer these services today and fewer still advertise these services to the public.

### **Why are unbundled legal services needed?<sup>1</sup>**

Research shows a very large, and widening, gap between Canadians who qualify for legal aid in their provincial plans and those who can afford to pay for full representation by a lawyer in a legal matter (for example, the National SRL Study (2013)). This is not a problem faced by Canada alone – data in other common law countries shows the same problem.

While full representation for litigants is preferable, in light of these realities the unbundling model is an important and promising development.

---

<sup>1</sup> This section taken from a memo prepared by Professor Julie Macfarlane, July 2016.

In the National SRL Study, almost 100% of SRL respondents (n=259) described looking for a lawyer who could offer some sort of limited assistance to them that they could afford (53% had previously had a full representation retainer with a lawyer, but could not afford to continue). Only a very small percentage (n=14) found a lawyer willing to offer them unbundling.

There is a significant disconnect between the demand for unbundled services and the supply by the legal community.

Unbundling is not the entire answer to the access to justice challenge in BC. However, it is an important tool to enable self-represented litigants to obtain legal advice, guidance, coaching and sometimes representation as they make their way through the justice system.

Unbundling also provides key value to lawyers, Courts, the Judiciary and the justice system in general. In particular, potential benefits include:

- self-represented litigants who have had access to unbundled services will be better prepared and familiar with court rules and procedures
- forms/pleadings and documents will be clearer
- hearings will be shorter and more focused
- the number of hearings will be reduced
- outcomes will be more just and
- justice resources will be freed up for other matters.

*“The better the litigant is prepared, the more efficiently the court operates. While judges would no doubt prefer fully represented litigants, the choice in most venues is a self-represented litigant who is well prepared or one who is not. Courts can avoid litigants who are in a procedural revolving door when those litigants have access to the services lawyers provide.”<sup>2</sup>*

### **What initiatives are underway?**

In BC there are three complementary initiatives already underway:

- The BC Family Unbundled Legal Services Project, administered by Mediate BC, funded by the Law Foundation and inspired by the Law Society. This project aims to encourage more family lawyers to offer unbundled legal services to support families using mediation. It is exploring more about how some lawyers are using unbundling successfully (and build on those experiences), surfacing the concerns and barriers that are inhibiting BC family lawyers from offering these services and developing strategies to alleviate those concerns. It is interested in exploring various business models as this approach must be both affordable for families and sustainable financially for the lawyers involved. While the project initially focused on

---

<sup>2</sup> Jessica K. Steinberg, *In Pursuit of Justice? Case Outcomes and the Delivery of Unbundled Legal Services*, 18 Geo. J. on Poverty L. & Pol’y 453, 453 (2011), available at [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1960765](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960765) at page 6.

mediation-related unbundled legal services, it quickly expanded to address unbundled family legal services in general. The goal is to increase access to family lawyers providing unbundled services by, in part, creating a [list/roster of family lawyers](#) willing and well-equipped to provide unbundled services as well as toolkits of helpful materials about unbundling for the legal community and the public. Kari Boyle is project manager.

- Access to Justice BC Unbundling Initiative: A2JBC is supporting an initiative under its umbrella that mirrors the BC project but on a larger/wider scale i.e. unbundling to support families to resolve their issues arising out of separation and divorce (not just limited to those using mediation). Jennifer Muller and Kari Boyle are “champions” of this initiative.
- The BC Law Institute is also researching the unbundled legal services approach as part of its “Financing Litigation Research Project”.

In other parts of the country:

Dr. Macfarlane’s [National Self-Represented Litigants Project](#) continues to advocate for increased unbundled legal services country-wide and has created a nationwide directory of professionals providing services to SRLs.

Nikki Gershman received a fellowship from the Law Foundation of Ontario to research and explore the concept of legal coaching in family law in partnership with the NSRLP.

<http://www.canadianlawyermag.com/6454/Legal-coaching-A-win-win-for-clients-and-the-bar.html>

In Ontario, [Justice Bonkalo’s recently published report](#) supports unbundling and legal coaching. JP Boyd in Alberta continues to champion unbundling and has launched a [new unbundling research project](#).

For more information check out the other materials in the [BC Family Unbundling Toolkit](#) (including best practice tips, FAQs, Do’s and Don’ts and a list of resources).