



Family Unbundled Legal Services Project Summary of Lawyer Survey Responses August 2016

Introduction

Mediate BC, with generous funding from The Law Foundation of BC, is leading a project to encourage more BC family lawyers to offer affordable unbundled legal services to families experiencing separation and divorce.

As part of Phase 1 the project sought input from BC family lawyers, family mediators and the public through online surveys. The purpose of this document is to summarize the key results and themes from the family lawyer survey. While the focus of the project is on using unbundled services to support families using mediation to resolve their issues, we were keen to learn more about family lawyers' attitudes toward, and experience with, unbundled services of all kinds. The project's scope does not include child welfare or child protection matters.

Different terms are used to describe "unbundled legal services" including "limited scope representation" and "limited scope retainer". For the purpose of this survey we used "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 or for one or more specific issues.

Since family lawyers often play multiple roles for clients, we asked them to focus their responses on their role as a family lawyer.

Demographics

We received 45 responses in total. Not all respondents answered all questions. 77% of the respondents were women and 23% were men. Ages ranged from 31 – 70 with an average age of approximately 48. 76% reported living in a city, 12% in a small city and another 12% in a town.

Types and Frequency of Unbundled Legal Services

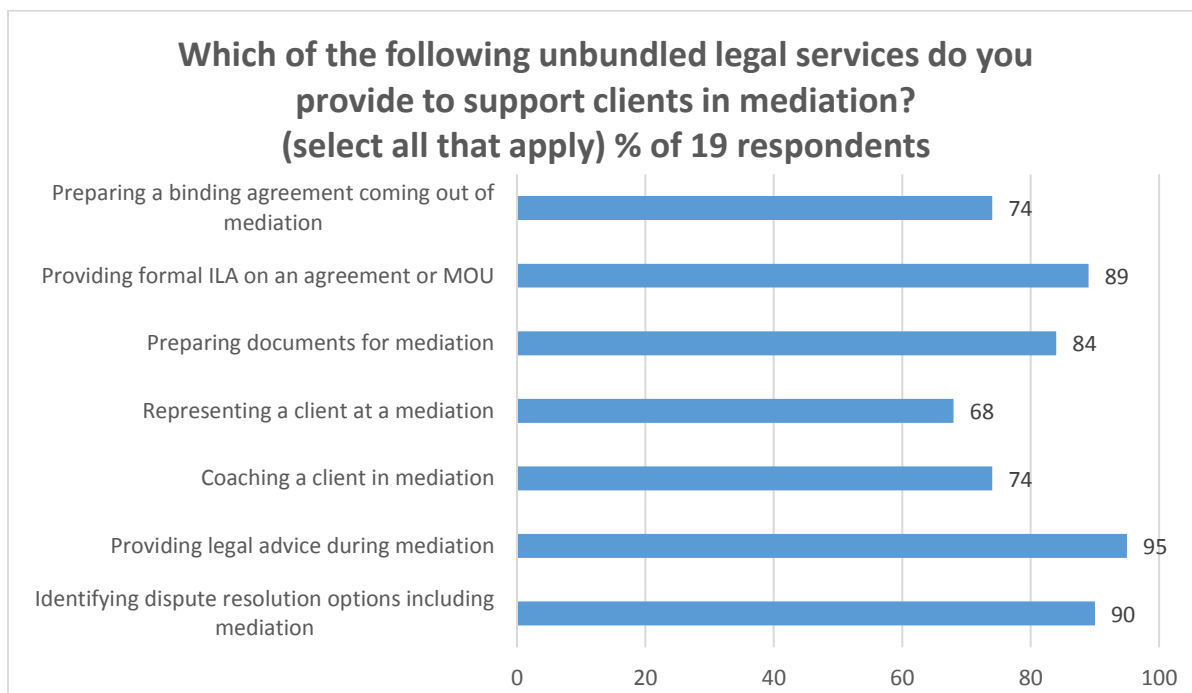
76% of respondents answered "yes" to the question "Do you provide unbundled legal services". Interestingly, only 26% of those (5 people) said that they advertised their unbundled services through their website or otherwise.

This group estimated that they each served an average of 3.75 clients per month on an unbundled basis (lowest fewer than 1; highest 15).

We asked respondents to describe the type of unbundled services they provided. The top 5 listed services were:

- Preparing documents and forms for the court
- Providing advice for self-represented litigants in court (procedural and substantive)
- Coaching
- Providing independent legal advice on agreements
- Providing one-time representation in court or at a discovery

We probed more deeply into unbundled services to support families using mediation. 100% of respondents (n=19) confirmed that they provide a wide variety of these services:



Some respondents advised that they are willing to provide any unbundled service: *“I can’t say I focus on any one area. It’s ultimately up to the client how they use my services.”* However, most expressed a preference for a more restricted scope of practice:

“Editing and redrafting of materials, as this is the most effective way to help a client. If they are before the Court with relevant, organized materials, they will be better equipped to meet the needs of the judge in understanding the case.”

“Initial advice and ILA. Initial advice is crucial to how folks approach conflict resolution. Section 8 (of the FLA) may be mandatory. However, the view of counsel will impact on advice given.”

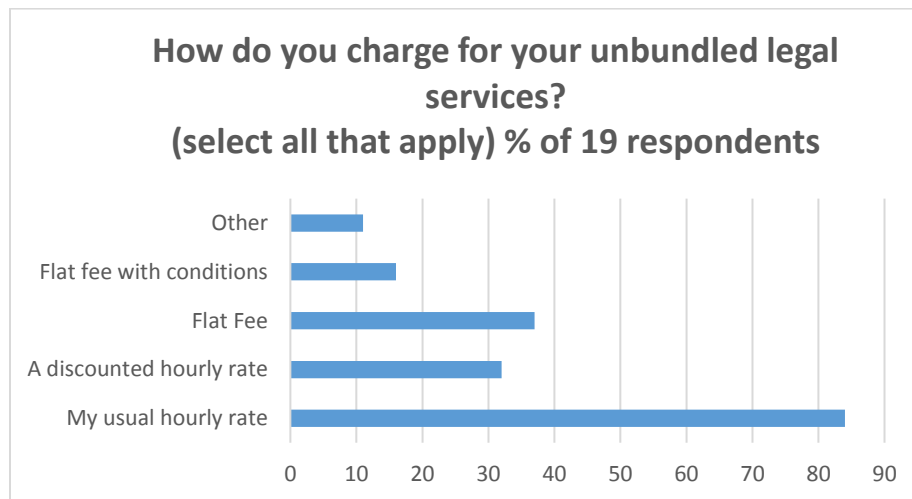
“I prefer unbundled services that will help individuals avoid court. For example, offers of settlement on a specific issue, preparation of financial and document disclosure, preparation for mediation or taking steps to force the other party into mediation.”

Lawyers are advised to be cautious in selecting the services to provide on an unbundled basis and in selecting clients who are able to manage this type of arrangement. We asked which types of unbundled services respondents tried to avoid. The most common answer was services relating to litigation, particularly representation at trial. Other respondents avoided providing legal advice on only one issue (when the issues are often intertwined in family matters) and when there was insufficient time to prepare.

Respondents also identified some of the situations in which they would refrain from providing unbundled services. The most common were:

- Clients who did not have the capacity or ability to self-represent
- Clients who had retained many other lawyers
- Clients who were overly confident or fixed on a position not supported by law
- Clients who did not listen
- Clients with various personality traits described by the respondents as “high maintenance”, angry, manipulative or tending to “pick fights”.

Financial Arrangements



Variations on the hourly rate model were the most common followed by a flat fee approach. When asked how they decided which model to use, responses ranged from “*Client decides – here are the options...*” to firm rules prevail: “*The firm has set a flat fee for certain routine functions. Bespoke legal work is billed at an hourly rate*”. Respondents noted that flat fees were used for discrete tasks and when the “time spent on the work can be safely estimated beforehand.”

Benefits to Lawyers of Unbundling

Respondents were asked to identify the benefit that they or their firms experienced by providing unbundled legal services. Responses fell into the following categories:

- Increased flow / turnover of clients (shorter matters)
- Increased and more stable cashflow
- Personal satisfaction for work aligning with personal values: “*Helping clients with limited financial means who would otherwise be disadvantaged due to power, economic and other imbalances.*”
- A business model that allows flexibility, lower overhead, affordable fees, ability to serve less affluent clients

Not all respondents identified benefits. One respondent stated:

"I cannot say my firm experiences the benefit – because there are extra steps we take to ensure our relationship with the individual is clear – this costs us extra time. However, on a personal level, it feels like the right thing to do. If my help can make a difference to someone – help them better understand their case and the applicable law then that's one less person lost and frustrated in our family law system. Also, I appreciate the difference preparing someone for court or mediation will make to the adjudicator or mediator."

Others expressed enthusiastic support for the unbundling approach:

"I am considering changing my business model to exclusively provide virtual, unbundled services at a lower cost. Eliminating my overhead will allow me to provide this service virtually. I am currently researching alternative business models to determine whether this is viable."

Concerns about Unbundling

Respondents (whether or not they provided unbundled services) were asked to identify concerns about offering unbundled legal services to their family clients. Many answered that they had no concerns, or at least no greater level of concern than for the "usual" family retainer.

The most common themes from other respondents, in rough order of priority, are as follows:¹

1. Fear of claims, liability, and complaints from unhappy clients.

"If I could feel more at ease about being sued – if unbundled services in family law were more common and better understood by the public – then I would provide these services more."

"The lack of specificity as to the nature and extent of the retainer and managing client expectations and those of the other side, represented or not."

"Ultimately, that the lack of understanding of legal issues and case law would cause them to make a claim against me in the future. I would see this happening especially in instances where I drafted pleadings and/or affidavits, but the client self-represented during a hearing."

Others acknowledged these concerns but noted that these risks could be managed:

"I understand that there may be a concern about being held responsible for matters beyond the retainer agreement. But I set out the nature and limits of the arrangement in a retainer agreement, and then keep it on track in conversations, emails, and letters, so that there is no misunderstanding. If I sense that a client could become problematic in this regard, I take whatever precautions are appropriate, including terminating the retainer."

"I do not have too many concerns as I am careful in my treatment of clients. Concerns could be liability, and/or having to deal with clients who make complaints to the law Society which takes

¹ While not noted directly in the responses to this survey, interviews with over 25 BC family lawyers identified another major perceived barrier to unbundling: reputational concerns. That is, the risk that Judges or other lawyers would think less of them if there was some reason to criticize the lawyer's work and the lawyer was not there to defend him or herself.

time to deal with. However, these are concerns whether services are unbundled or not. One must take careful notes, and be clear with clients about the limitations of the service. Signed agreements to that effect are helpful.”

“I have not advertised because of insurance concerns around providing unbundled services – I try to avoid providing these services, but also understand the great need for such services. Now that I know the LSBC is encouraging this practice and has developed some unbundled services retainer agreement precedents I will likely advertise these services on my website.”

2. Preference for clients to have the full representation model; unbundling is a second rate service.

“Most people would benefit from full representation to help relieve their stress and anxiety and get better outcomes but they just cannot afford it. So it often feels like unbundled services are second best.”

“That it is not a complete service. The information is too limited to provide the best service. Missing information and limitations result in risks that the client has to accept.”

“Providing ad hoc assistance is counterproductive to effective representation, which is powered by an overall strategy. Clients are often left either more confused than ever, half way through a process or an argument they don’t fully grasp, or overly confident in their abilities and expectations of the final outcome.”

Others noted that even if full representation was best, not all clients can afford that model.

3. Discomfort with the possibility that the lawyer does not have all of the relevant information before providing services.

A number of respondents reported concerns about “not having all of the information to do things correctly” and “(not) getting all the information/facts (and background) to give a truly informed opinion”.

“I think there are significant risks to a lawyer – in order to satisfy our professional obligations we need to make sure we have full disclosure and that (the) client fully understands what they are giving up. This is not a business transaction. I do not think it is appropriate for family lawyers.”

“It’s scary for lawyers, and has the greater potential to lead to negligence or errors because contact with the client and the ability to verify and gather information is limited by the nature of the representation. Plus, clients going to various lawyers for unbundled service is not effective.”

One respondent noted that the provision of independent legal advice (usually on a separation agreement), was perceived to involve the highest level of risk for counsel: “We only know what we are told and while I paper over as much as I can, ILA is inherently risky. Clients don’t know what they haven’t told us and as we don’t have a working historical relationship with the client there is huge room for miscommunication.”²

² Interestingly, many BC family lawyers have provided ILA for many years. It is a form of unbundling.

What needs to change?

Respondents were asked to identify what needs to be changed to encourage them to provide these services to families.

Those who were not currently providing unbundled services responded with comments falling into these themes:

1. A structure or system to support unbundling

Respondents emphasized the need for a comprehensive framework to address perceived risks. They suggest that the framework include an understandable process to follow complete with clear professional guidelines, templates, checklists, ready-made materials and guidance on critical issues.

“Like all things lawyers do, a clear checklist of steps taken and information received can reduce the risks here.”

2. Support and endorsement from the Law Society

In line with the liability concerns noted above, respondents identified a need for a greater sense of support from the Law Society (and its insurer), particularly in the event of a claim or complaint. One respondent emphasized the need to feel that he was *“not going to get in trouble if I’ve missed something due to the way unbundled services are handled, especially because clients like this are generally in a rush but don’t have all of the information and it’s never as simple as they think.”*

Another explicitly called for *“greater protection/support to lawyers from the Law Society”*.

3. Education of, and promotion to, the public about unbundling

“It would be helpful if there was more knowledge in the public about the benefit of these services so that we are not doing all of the educating on it.”

Another Respondent commented on the same theme:

“Education for family law lawyers and the public is needed – educating family law lawyers on how to provide unbundled services with the least amount of risk and educating the public on the availability of these services and what they mean – that they are not hiring a lawyer but simply contracting out certain services or parts of their case to an expert who will only be liable for the service or advice they have been hired for and nothing else.”



Closing comments

Respondents were asked to provide any other comments. One respondent said:

“In today’s world, unbundled services are crucial for families because of the cost of legal services, and the limits to availability to legal aid. Unprepared self-litigants in court leads to increasing costs and poor results. Support to mediation is crucial given that without support, mediations can result in poor agreements.”

Information about the BC Family Unbundled Legal Services Project can be found [here](#). This summary and summaries of the family mediator and public survey will be posted soon.

Mediate BC is enormously grateful to the family lawyers who participated in this survey – thank you! The information was enormously helpful. Stay tuned for more information from the BC Family Unbundled Legal Services Project.