



# The Alberta Limited Legal Services Project

## Unbundling FAQs for Lawyers

Adapted by Rob Harvie from MediateBC's "BC Family Unbundled Legal Services Project Unbundling Toolkit for Lawyers and Paralegals"

### 1. What are limited legal services?

The traditional model of a full-service being required to hire a lawyer leaves many people in a position where they are unable to retain legal counsel.

In 2010 the Alberta Rules of Court were specifically amended to allow for limited scope, or "limited service" retainers for lawyers.

*Retaining lawyer for limited purposes*

*2.27(1) If a self-represented litigant or a lawyer of record retains a lawyer to appear before the Court for a particular purpose, the lawyer appearing must inform the Court of the nature of the appearance, either*

- (a) orally, or*
- (b) before the appearance, by filing the terms of the retainer.*

*(2) If a self-represented litigant retains a lawyer for a particular purpose, the litigant must attend the application or proceeding for which the lawyer is retained unless the Court otherwise permits.*

Accordingly, since 2010, the Rules of Court specifically provide for "limited purpose" representation to be provided by a lawyer in Court – provided the lawyer discloses that limited scope of their retainer orally in court, or by filing the terms of his retainer with the court prior to their appearance.

In conjunction with this recognition, the Law Society of Alberta also made provision in their **Code of Conduct** to confirm the ability of members of the Law Society to be engaged on a limited scope basis:

#### *Limited Scope Retainers*

*3.2-2 Before undertaking a limited scope retainer the lawyer must advise the client about the nature, extent and scope of the services that the lawyer can provide and must confirm in writing to the client as soon as practicable what services will be provided.*

#### *Commentary*

*[1] The scope of the service to be provided should be discussed with the client, and the client's acknowledgement and understanding of the risks and limitations of the retainer should be confirmed in writing. The lawyer should clearly identify the tasks for which the lawyer and the client are each responsible. The lawyer should advise the client about related legal issues which fall outside the scope of the limited scope retainer, and advise the client of the consequences of limiting the scope of the retainer, to allow the client to have enough information on which to base a decision to limit or expand the retainer.*

*[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. Modifications to the scope of the limited scope retainer, or the obligations of the client and lawyer, should be confirmed in writing. The lawyer should also consider advising the client when the lawyer's retainer has ended.*

*[3] 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. Lawyers should consider whether disclosure of the limited nature of the retainer is required by the rules of practice governing a particular tribunal or other circumstances.*

*[4] In Alberta, Rule 2.27 of the Rules of Court requires lawyers to inform the court if the lawyer is retained for a limited or particular purpose.*

*[5] When one party is receiving legal services pursuant to a limited scope retainer, the lawyers representing all the parties in the matter should consider how communications from opposing counsel in a matter should be managed. (See Rule 7.2-9).*

*[6] This rule does not apply to situations in which a lawyer is providing summary advice or to initial consultations that may result in the client retaining the lawyer.*

*[7] Summary advice may include advice received in a brief consultation on a telephone hotline or from duty counsel, for example, or may otherwise be advice which is received during the provision of short-term legal services, described in Rule 3.4-15.*

"Limited Legal Service" (also known as "Limited Scope Retainer", "Unbundled Legal Service," "a la carte legal service", etc.) is simply a form of retainer where the client does not ask the lawyer to take on overall responsibility for their legal matter, and instead, retains the lawyer for a specific, limited, purpose.

While the Rules of Court and the Code of Conduct have allowed, specifically, for lawyers to undertake limited scope representation, even today, this type of service has been relatively restricted – but has, nonetheless, been a part of legal representation for decades. Examples of long-standing lawyer "**limited legal services**" include:

- One-time legal consultations;
- Independent legal advice for family law agreements;
- Corporate or commercial opinions;
- Collaborative Law;
- Duty counsel;
- Mediation.

Accordingly, while many lawyers may suggest that they "don't provide" limited legal services, in fact, most lawyers do provide limited legal services for their clients, at least in some small part.

More recently, lawyers, law societies, and the public have sought to expand the potential of limited legal services to allow clients a broader scope of potential representation – in particular, allowing many members of the public to obtain some legal assistance – at least on a limited basis, where they might otherwise have none.

The concept is that a client can hire a lawyer for a relatively compact or limited task, which will therefore be more easily affordable for the client, who then takes on responsibility for the overall legal matter they are dealing with beyond those tasks specifically agreed upon to be completed by the lawyer.

Those "limited legal service" tasks could include:

- Drafting a document;
- Providing research on a specific topic;
- Appearing in court on a specific application;

- Broad "coaching" where the lawyer provides advice regarding the law, process, procedure and/or tactical advice;
- Any other specific legal task agreed upon between the client and the lawyer.

While pro-bono legal work has always been a part of the service lawyers provide the public, lawyers still must earn a living for themselves and their families – and limited legal service is considered to be a piece of the access to justice package that allows for greater access to legal services by the public, while still allowing the lawyer to charge a reasonable rate for their time.

Particularly in family law where self-represented litigants have become extremely common, there are many opportunities for Limited Legal Service to be of great value to clients, including:

- The initial consultation meeting
- Providing strategic advice including various resolution options
- Drafting specific documents (pleadings, arguments, affidavits, orders)
- Conducting legal research
- Appearing in court for one application/hearing
- Coaching on process, strategy, negotiation or participation in court
- Representation during a mediation
- Providing independent legal advice on a mediation agreement
- Drafting an agreement coming out of a mediation
- Providing legal advice before, during or after a mediation session
- Organizing documents
- Any other service which might be contemplated as helpful by the client

## 2. Potential Win/Win for Clients and Lawyers

Many lawyers offering limited legal service see it is a benefit to themselves as well as their client. Some of those reported benefits are:

- Reduced Receivables:** because service is limited, it is typically for a fixed price, often paid for in advance, removing stress, expense and hassle of receivable issues;
- Business Promotion:** particularly for younger lawyers willing to promote broad availability of Limited Legal Services, they may expand their market share by engaging in a service less often offered by more senior counsel, used to traditional retainer practice;
- Larger Potential Market Share:** 41% of married couples, roughly, will get divorced. However, the number of persons in the middle and even upper middle class able to afford a traditionally retainer lawyer to conduct their matter is a very small proportion of those people. Limited Legal Services provide access to a market which may be largely untapped in the current full retainer paradigm;

- d. **Less Stress:** when providing Limited Legal Services, the lawyers job is complete once their task is completed – with the future responsibility of the matter being that of the client. As a result, fewer files "follow the lawyer home" after they leave the office;
- e. **Life Style Control:** this type of work is well suited to lawyers who wish to work part-time, particularly for lawyers coming off of parental leave or working into retirement;
- f. **Potentially More Lucrative:** current "full service retainer" practice puts the lawyer on a treadmill, being a slave to the billable hour – with little encouragement for improved efficiency. By working on a "fixed cost" basis, common with Limited Legal Service, there is a bonus for the lawyer becoming more efficient, potentially charging the client less, while earning more per hour;
- g. **Potential Risk Reduction:** while the recent Ontario Court of Appeal decision in *Meehan v. Good*<sup>1</sup> raises concerns for those engaging in Limited Legal Service work, the suggestion is that, firstly, that decision is limited to a question of the very basic, fundamental obligation of legal counsel to warn clients when limitation periods are apparent. Beyond that, the anecdotal evidence suggests lawyers are less likely to be subject to complaint or negligence suits where their client does not see them as "being responsible" for the legal matter as a whole. For example, law suits relating to lawyers providing mediation or collaborative law are extremely uncommon;
- h. **Contribution to Access to Justice (While Still Getting Paid):** lawyers expanding the scope of their services, by specially offering to engage clients on a Limited Legal Service basis are allowing many more people to access some legal services, who would otherwise be on their own – all while still getting paid. A win/win for the lawyer and the client. As reported by Dr. Julie Macfarlane, 86% of self represented litigants still wish to have legal assistance – they simply can't afford it under the current model of "lawyer does all."<sup>2</sup> Limited Legal Services offer a viable source of assistance for the ever-expanding number of Self-Represented Litigants;
- i. **Expanded Empowerment of Clients:** many clients complain that their lawyer didn't listen to them or didn't understand their problem. Further, in a recent blog exchange, one person bemoaned paying a lawyer for clerical or non-legal work which they, the client, could have done themselves. Limited Legal Services offer ability for the client to obtain a more efficient form of legal service, where they pay for only what they want, and are then free to assume responsibility for those matters they choose to do on their own. This "empowerment" of the client is a significant change in the solicitor/client relationship – to the potential benefit of the client and the lawyer, whose responsibility

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<sup>1</sup> *Meehan v. Good*, 2017 ONCA 103

<sup>2</sup> **The National Self-Represented Litigants Project: Identifying and Meeting the Needs of Self-Represented Litigants Final Report** May 2013- <http://representingyourselfcanada.com/wp-content/uploads/2016/09/srlreportfinal.pdf> @ p.12

becomes more compact and limited. More power to the client, less responsibility for the lawyer.

### **3. Benefits for the Judges and the Justice System**

Particularly in family law, we are seeing a massive increase in the number of Self-Represented Litigants before our Courts. Many of these people are poorly prepared to engage in litigation on their own, to significant potential costs to themselves, to other litigants, and to the system as a whole.

Having a Judge tied up in lengthy discussions with a self-represented litigant who is having difficulty understanding process or law, creates frustration and cost for all parties that could be assisted if that litigant were assisted in court, or outside of court, by Limited Legal Service counsel.

Limited Legal Services offers benefits, not only to the client and the lawyer reference above, but also to the larger justice system:

- a. **Improved Court Efficiency:** without legal advice or representation, some family members will come to court uninformed and overwhelmed, seeking substantial help from Judges and court staff. Limited Legal Services can provide a partial answer to these challenges including:
  - Legal assistance to prepare the litigant's pleadings and other materials can result in higher quality documents and improve court efficiency.
  - Lawyers can provide assistance in presenting evidence, rules of evidence, and other procedural aspects.
  - Lawyers can provide somewhere for the court and registry staff to refer parties who need help.
  - Legal services can result in reduced wait times, reduced demands on judicial resources through reduced volumes of applications and shorter hearings and trials.
  - Legal services can also reduce demands on court services / registry personnel.
  - Legal services can alleviate some of the pressure that Judges experience in working with self-represented litigants.
- b. **Improved Alternate Dispute Processes:** use of Limited Legal Services can facilitate informed settlements, and may improve mediation outcomes where litigants are better informed as to the strengths and weaknesses of their position;
- c. **Improved Public Perception of the Justice System:** Self-represented litigants often leave the justice system, seeing it as unfair and unresponsive. Access to Limited Legal Services may lead to improved public perception of the justice system as clients are better informed as to the limitations of the system, while being empowered to be more

effectively understood in that system.

#### **4. How Can I Make Limited Legal Service a Safe and Enjoyable part of my Practice?**

Firstly, consider the provisions of the Code of Conduct referenced above. Lawyers have a duty to very **clearly outline the scope of their retainer with their client.**

The Limited Legal Services Agreement provided in the materials on our website is very simple, but clear. The lawyer is advised to read the agreement, verbatim, with their client prior to signing and to answer any questions fully before allowing a client to execute same.

The lawyer should engage in no work outside the scope of that retainer, notwithstanding that it may seem simple or minor – such that *any additional work not contemplated in the retainer should be made subject to a written amendment or, better, a further written retainer for those additional services.*

Lawyers are advised also to consider the Meehan v. Good decision, and to understand that notwithstanding the limitation of their retainer, if a client provides information to the lawyer disclosing clear potential risk to the client, the lawyer has a duty to advise the client of that potential risk – particularly relating to any applicable limitation period – in writing.

Secondly, a lawyer must **consider the ability of the client to take advantage of Limited Legal Services.** Under **Rule 3.1 of the Code of Conduct**, regarding competence generally, the following commentary is provided:

*[8] Lawyers owe clients a duty of competence, regardless of whether the retainer is a full service or a limited scope retainer. When a lawyer considers whether to provide legal services under a limited scope retainer, the lawyer must consider whether the limitation is reasonable in the circumstances. For example, some matters may be too complex to offer legal services pursuant to a limited scope retainer. (See Rule 3.2-2).*

If a client appears to be unable to make use of the lawyer's service, due to complexity of the issue, the lawyer should be wary of taking an engagement on a Limited Service basis, where it appears unlikely that the service will provide the client real, useable, benefit.

Finally, **be clear with your client regarding their ability to ask follow-up questions.** If you will not be answering further questions about your service by email or by telephone without additional charge, make that clear to the client. Many lawyers have difficulty thinking that their "service" has ended, only to receive a barrage of phone calls and emails after the service is delivered. Clients understand that a lawyer's time is valuable, however, the onus is on the lawyer to make clear that the retainer either does not entitle the client to further inquiries – or that further questions are permitted, and what the price for those phone calls or emails will be.

## **5. Why should I join the Alberta Limited Legal Services Project?**

The Project, arising from joint discussion with the Government of Alberta, the Law Society of Alberta, the Canadian Bar Association, Pro Bono Law Alberta, Legal Aid Alberta, and other justice stakeholders, is an effort to expand the availability of legal service to persons who would otherwise be unable to fully retain legal counsel – as a part of the broader effort to improve Access to Justice in Alberta.

Many lawyers in Alberta already provide some form of unbundled legal service. However, few actively promote these services to the public and the project offers an opportunity to expand public awareness of the availability of Limited Legal Services, and to provide a means of connecting lawyers willing to provide that service with the people who need it.

Beyond the benefits referenced above, participants in the project will have an additional avenue to promote their services, free of charge, by way of a listing of their professional details on our website, a website which will be available to the public and which will also be specifically exposed to Judges, Court Administration and other justice constituents.

As an added bonus, your listing will also be available to 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 Alberta - related matters.

## **6. Why do I need a written retainer agreement?**

While it is always advisable to use a written retainer letter, it is essential when providing Limited Legal Services (Rule 3.2-2). 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.

## **7. What should the written retainer letter look like?**

While not mandatory, it is recommended that lawyers utilize the written retainer agreement included in our lawyer materials.

## **8. What do I do if the client asks me to take on additional work?**

As referenced above, 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. As advised above, confirm any additional services in writing – preferably by a further agreement – **prior** to engaging in those services.

### **9. How does unbundling affect my duties of competence and ethical conduct?**

Lawyers providing unbundled legal services have the same duties of competence and ethical conduct as those who provide full-representation services. See commentary [8] above, under Rule 3.1 of the Code of Conduct above.

Your obligation to provide competent, ethical advice and assistance is not diminished during the course of a Limited Legal Service Retainer.

### **10. What are the Rules regarding Other Lawyers Communicating with a Limited Legal Service Client?**

Our Code of Conduct provides:

*7.2-9 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.*

The further Commentary on this provision provides:

*[3] Where notice as described in Rule 7.2-9 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.*

Accordingly, unless specifically advised, opposing counsel is free to deal directly with your client. Accordingly, if you wish to prevent such conduct, the onus is on you to communicate the nature of your retainer and its scope to other counsel, in writing.

### **11. Should I advise the court that I am working on an unbundled basis?**

As referenced above, if you appear in Court you must disclose the limitation of your retainer to the Court, and if appearing before a tribunal you must take care not to mislead the tribunal as to the nature of your retainer – and care should be taken to review the Rules specific to that tribunal as to your obligation to disclose a limited legal service retainer.

Beyond that – there is no obligation to disclose your retainer to the court or a tribunal where you are not appearing on the client's behalf.