

# **The Nuts & Bolts of Unbundling: A NSRLP Resource for Lawyers Considering Offering Unbundled Legal Services**

**Julie Macfarlane and Lidia Imbrogno**

## **1. What do all these different expressions – unbundling, limited scope retainers, legal coaching – mean?**

In this Resource, we shall use “unbundling” and “limited scope retainers” interchangeably.

The formal term used by most Rules of Professional Conduct is “limited scope retainer”. The idea of “unbundling” one’s services is a more visual way of conveying the same meaning – if full representation is a “complete bundle” or package of legal services, then “unbundling” extracts one or more of those services and offers them separately.

“Legal coaching” is an expression developed and promoted by the NSRLP, and flows directly from the data collected from self-represented litigants in the [2013 National Self-Represented Litigants Study](#), which we use to describe the type of assistance that requires a client to do much of their own work, while the lawyer provides “coaching” – guidance, information, strategic counsel, feedback and review.

## **2. What types of services could I offer under a limited scope retainer?**

The types of legal services that are typically “unbundled” include:

- Review of court forms or other documents before filing
- A (limited) review of relevant case law
- Advice or explanations of legal procedures and how to proceed
- Preparation for a specific event: for example a settlement conference, a motion hearing, or even a trial

“I believe that trial preparation and drafting materials are most amenable to unbundled legal services.” (lawyer respondent to NSRLP’s Unbundling Survey, described at <http://representingyourselfcanada.com/making-it-legal-some-simple-steps-for-moving-unbundling-to-the-next-stage>).

These are precisely the types of limited services that litigants tell us they want help with. A longer list of possibilities can be seen in the limited scope retainer template agreements below at (4).

### **3. How would I determine whether a particular case or client is suitable for a limited scope retainer?**

This is a personal evaluation, but the major issues to check out include:

- Does this potential client appear to understand that your services will be limited to those you both identify and delineate in the retainer?
- Does this potential client appear to have accepted that they must undertake the remainder of the necessary work themselves?
- Does this potential client appear to be realistic about the amount of time and work that remains for them to manage, in order for them to successfully self-represent?
- Does this potential client have friends and family who will support them, or some other support network (for example the National SRL Support Network [www.supportforcourt.ca](http://www.supportforcourt.ca))?
- What stage is this matter at? Has there already been some work done by the potential client, and are they willing to spend sufficient time (and money) briefing you on this?
- Is this matter *especially* complex or difficult for a person without legal training to handle?

Not one of these questions is dispositive – but these are important questions to discuss with any potential client before agreeing to negotiate a limited scope retainer. For practical steps to ensure that clients and cases are appropriate for limited scope representation, see [Stephanie L. Kimbro, \*The Ethics of Unbundling\*, 33 FAM. ADVOCATE 27 \(2010\)](#)

### **4. If I wanted to create an agreement to be retained on a limited scope basis, what would it look like?**

The most critical advice that lawyers already familiar with unbundling give is to ensure that the retainer agreement is clear, and that the client understands it and its consequences.

There are many templates available that can be adapted and customized. Some of the most widely used include:

- LAWPRO offers a family limited scope retainer [template](#)
- The Lawyer's Insurance Association of Nova Scotia offers a [template](#)
- The Law Society of British Columbia offers a [template](#)
- The American Bar Association offers a dedicated resource centre with links to many unbundling templates and other materials at [http://www.americanbar.org/groups/delivery\\_legal\\_services/resource.s.html](http://www.americanbar.org/groups/delivery_legal_services/resource.s.html)

## **5. Do I have a greater risk of malpractice suits or disciplinary complaints if I offer unbundled legal services?**

There is *no evidence* that offering services on a limited scope basis either increases the risk of malpractice suits or complaints to your regulator (see for example American Bar Association, [Handbook on Limited Scope Assistance](#), at 52) Law Societies in Canada do not keep formal statistics on complaints arising from limited scope retainers but in answer to our enquiries report few complaints associated with such arrangements.

You can read more about this, and learn about practical tips for reducing risk (via resources developed by legal insurers) at:

- Anne Kirker and Jennifer Blanchard, *Limiting the Risks of Limited Scope Retainers*, writing in [Canadian Bar Association Alberta branch Limited Scope Retainers](#)
- [Beverly Michaelis, \*Unbundling in the 21st Century: How to Reduce Malpractice Exposure While Meeting Client Needs\*, OR. ST. BAR BULLETIN \(August/September 2010\)](#)
- [Stephanie L. Kimbro, \*Lawyers Mutual Liability Insurance Company of North Carolina, Unbundled Services: Risk Management handouts of Lawyers Mutual \(2010\)\*](#)

## **6. What does my provincial Law Society say about unbundling?**

Law Societies across Canada have approved the offering of unbundled legal services, and many have developed a discrete rule on limited scope retainers. For example, see:

- Law Society of Upper Canada: *Unbundling of Legal Services and Limited Legal Representation background paper 2011* at Appendix 3
- Law Society of British Columbia: Chapter 10, Rule 10 of the *Professional Conduct Handbook*
- Law Society of Alberta: Chapter 9, Code of Professional Conduct
- Barristers Society of Nova Scotia, Chapter 3, Code of Professional Conduct

## **7. How do I ensure that I am not seen as a lawyer of record by the court if I am retained only on a limited scope basis?**

Rules of court in some provinces now draw an explicit distinction between the responsibilities of a lawyer retained on a limited scope retainer, and the “lawyer of record”. Other provinces are in the process of introducing such rules, and judges are increasingly aware of the limited obligations of counsel retained on a limited basis (<http://representingyourselfcanada.com>) Examples of rules already in place include the Ontario Rules of Civil Procedure Rule 15; the Alberta Rules of Court Rule 2.27; the Saskatchewan Queen’s Bench Rule 2-39.

## **8. What are the market opportunities for offering unbundled services?**

There are hundreds of thousands of Canadians who can no longer afford full representation – and who are coming to court self-represented out of necessity, not choice – yet who want to access affordable expert assistance. This is a huge untapped market.

“The total potential market share of those who might be able to afford a lawyer on a general retainer is 5.7%. The potential market share for those prepared to offer their services by way of the limited scope retainer is...everyone else.” (Rob Harvie, writing in [Canadian Bar Association Alberta branch \*Limited Scope Retainers\*](#) )

Since this type of service has not previously been offered by lawyers, any marketing strategy must consider effective use of social media and other forms of advertising. It may also be important to adopt a phrase to describe “unbundling” that is more meaningful to the public; for example, limited legal assistance, targeted legal services, or personalized legal services.

## **9. Other benefits and rewards of offering unbundled legal services**

### *Build a practice*

Lawyers who offer unbundling describe building a practice that focuses on this underserved group. Research consistently identifies as unable to afford full representation, but able to afford, and in the market for limited / targeted representation. Lawyers already offering unbundling report anecdotally that they encounter fewer problems collecting fees for limited scope arrangements compared with traditional retainer agreements. They also report that often infrequently a client who begins with limited scope service ultimately asks for, and pays for, more help as their case progresses and a trusting relationship develops.

### *Addressing the Access to Justice crisis*

“The problems of self-representation are systemic as well as individual. Individual lawyers can do what we can – but there are thousands of other people at the courthouse without help.” (Victoria Foster, lawyer offering unbundled legal services in Red Deer, Alberta)

### *Be part of the future of legal services*

Read this paper by the “grandfather” of unbundled legal services:

[Forrest S. Mosten, \*Unbundled Legal Services Today—and Predictions for the Future\*, 35 FAM. ADVOCATE 14 \(2012\).](#)

## **10. Whom could I speak with if I have more questions about whether to offer unbundling?**

The NSRLP maintains professional relationships with many lawyers who offer unbundled legal services. If you would like to talk with a colleague in your region or anywhere in Canada about this work and its challenges and rewards, please email us at [representingyourself@gmail.com](mailto:representingyourself@gmail.com) and we can make a personal introduction.