

Family

Unbundled legal services for family cases in Ontario

By **Rachel Birnbaum and Nicholas Bala**



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(October 5, 2020, 2:50 PM EDT) -- There is growing concern about the increase in self-representation in family proceedings and the resulting challenges faced by courts and litigants. One response is to facilitate use by self-represented litigants of unbundled legal services, so they can purchase a limited amount of advice, or focused representation, at a much lower cost than full representation.

In 2018, a number of Ontario professional organizations collaborated to establish the Family Law Limited Scope Legal Services Project (FLLSS), with initial funding from The Law Foundation of Ontario and support from the courts. The project aims to mobilize lawyers and other justice system stakeholders to increase the use of unbundled family legal services, including legal coaching.

To date, over 200 family law lawyers have joined the FLLSS roster, providing unbundled services in 23 languages in over 50 communities.

To be on the roster, the lawyers had to have at least three years of experience in family law and take a two-hour training program that is available online. The project has a website to link potential clients with lawyers and provides information to the public and precedents to lawyers doing this type of work. Although initially much of this type of work was being done by lawyers meeting clients in person, with the pandemic much of the work is being done virtually.

As part of this important collaborative initiative, research is being undertaken to gain a range of perspectives on the value of unbundled family legal services from different groups. Preliminary results reveal enthusiasm from lawyers and clients, and cautious support from the judiciary, but identify challenges ahead in expanding use of this type of legal service delivery model.

Lawyers' perspectives

A survey of 61 lawyers on the roster revealed that the vast majority (85 per cent) of them enjoy this type of work and believe both that their clients find it cost effective and appear satisfied with this form of legal assistance. The majority say that they will continue to provide unbundled legal services in the future, though most report that this is a small part of their practice and that they have received limited business from the project.

The lawyers reported that clients generally understood the limits to the services provided and that this type of arrangement works well with more sophisticated clients. There were concerns that a relatively small number of clients have unrealistic expectations of what could be done within the scope of this type of retainer. Lawyers also expressed concerns about litigants who left "things until the last minute" to seek assistance, especially on the eve of a trial.

Judicial perspectives

A clear majority of the 57 judges surveyed (73 per cent) recognize that the courts may face special challenges when one or both parties are making use of limited scope services, and in that sense, it is

less challenging for courts if both sides have full representation.

However, judges also recognize that litigants having limited scope services is preferable to them being self-represented. Well over half (61 per cent) of the 57 judges surveyed believe limited scope legal services can help self-represented litigants in family cases effectively resolve their disputes either often or always; about a third (36 per cent) believe that these services are only sometimes helpful; and only two judges (three per cent) felt that limited scope legal services were rarely helpful.

A major positive feature of limited scope services from the perspective of judges is that the involvement of lawyers in this way can help to settle cases.

Litigant perspectives

We were also able to survey 20 litigants who made use of limited scope legal services for their family cases. While the litigants were mainly satisfied with this form of legal assistance and the services provided by the lawyer, most expressed considerable frustration with the family court process in general.

A few reported they felt that the lawyer providing them with limited scope services was not sufficiently responsive to their concerns about having a collaborative process, for example by spending time with the lawyer as documents were being drafted.

Conclusions

The research reveals that lawyers and judges are generally supportive of unbundled services for family cases and recognize that this type of assistance can help move cases forward and facilitate fair settlements. While the use of limited scope services is generally viewed as a positive option for litigants, judges and lawyers recognize that it has its limits.

The funding for the pilot project is nearing an end. Given the concerns of the Law Society of Ontario and government about lack of access to family justice, these bodies have the responsibility to ensure that this project continues and is indeed expanded so that more self-represented litigants can get assistance in this way.

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