



Family Unbundled Legal Services Project Summary of Family 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 public survey. We sought input from people who are or have been involved in a family dispute involving separation or divorce anywhere in Canada, but particularly in BC. 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 the public's 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.

Demographics

We received 46 responses in total. Not all respondents answered all questions. 60% of the respondents were women and 40% were men. Ages ranged from 21 - 80 with an average age of approximately 47. Responses by province are:

BC: 72%; AB: 11%; ON: 11%; SK: 3%; NT: 3% (n=36)

86% reported living in a city, 11% in a town and 3% in a rural location.

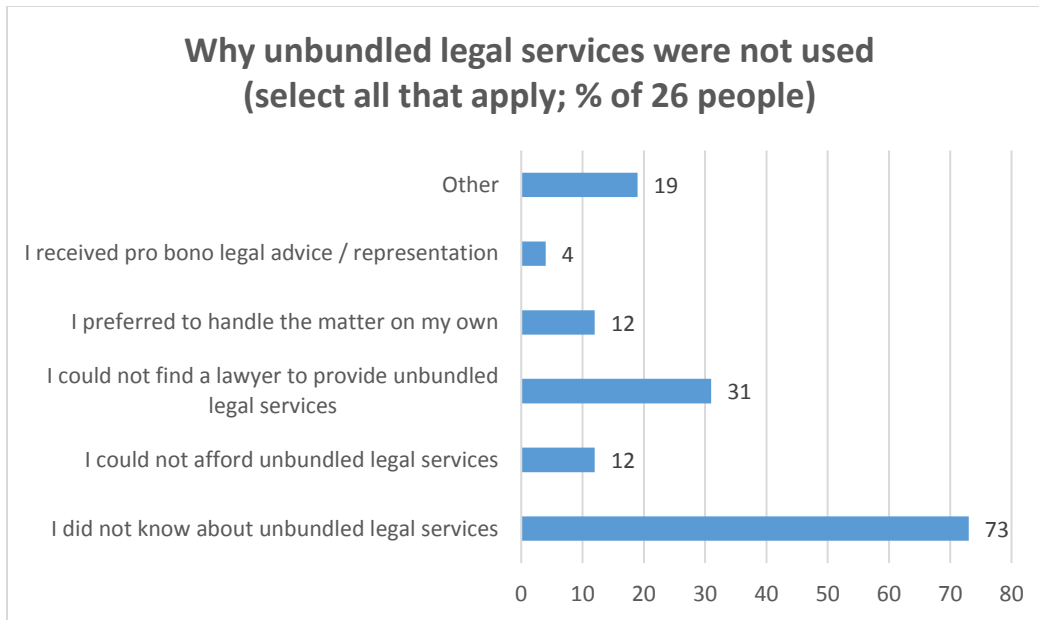
Use of Unbundled Legal services

We included more expansive examples of "unbundled legal services" in the family context¹, recognizing that many different phrases are used and the concern that few people were aware of this phrase.

Did you use unbundled legal services during your family dispute? 38% said yes; 62% said no.

¹ The wording we used in the introduction to the survey was: "For example, rather than retaining a lawyer to represent you in your family matter from beginning to end (usually on an hourly rate basis), you may wish to retain a lawyer ONLY to help you prepare for and participate in a mediation (a legal advice and coaching role) OR to provide you with independent legal advice on an agreement reached through mediation OR to prepare a document for you to use in court OR to represent you at one court hearing."

Those who did not use unbundled legal services provided the following reasons:



Comments included:

“I am unfamiliar with the system to determine what I need and what I can unbundle. Also, the opposing lawyer brings up all the issues and it could be a challenge to demarcate them with my lawyer.”

“I did not know about it, and to this day, I cannot find anyone willing to help in this manner.”

“Lawyer did not offer to me. My finances were/are dire and legal bills added to huge stress.”

Respondents were asked to describe how they first heard about unbundled legal services.

The most common response was that respondents didn’t know what to call it at the time – they knew what they needed and went out and found someone to help.

“(I) never heard the term before, that’s just the way I did it.”

“I asked for them before I knew they existed. I learned later what I asked for was referred to unbundling.”

Other sources of information about unbundling were:

1. Legal Aid / Duty Counsel (4)
2. Lawyer (4)
3. Supreme Court Self-Help centre (1)
4. CBABC lawyer referral service (1)
5. Family Justice Counsellor (1)

Accessibility of unbundled legal services

As noted earlier, 31% of respondents reported that they had such great difficulty finding a lawyer that they were not able to access unbundled services. 47% of those who did use unbundled services reported that it was somewhat or very difficult to find an unbundled lawyer to help them. One respondent commented:

“I pursued this with lawyers until one finally provided the service (information) I required. It was not easy and most lawyers refused.”

Others were fortunate enough to have personal contacts with lawyers and others were able to negotiate an unbundled arrangement with their existing lawyer after their money ran out.

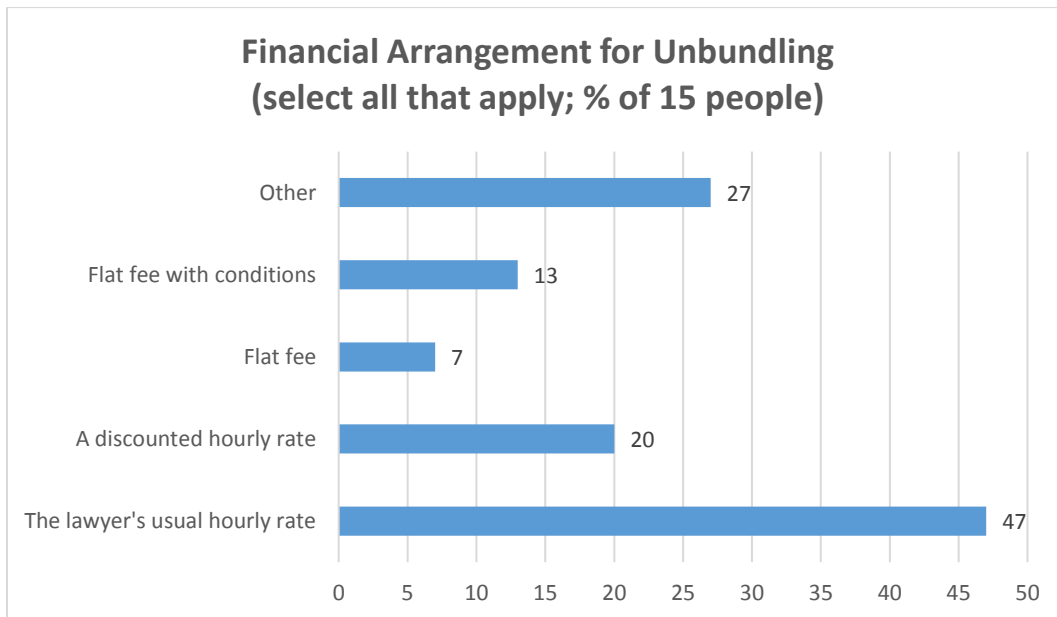
“I couldn’t afford to have my lawyer on retainer, so I used him in a limited (unbundled) capacity.”

Unbundled services to support mediation

Of those respondents who had used unbundled legal services, 11 respondents (out of 15 who answered this question) reported that they had used mediation to resolve their family issues. Only two respondents provided information about the type of unbundled services they received to support their use of mediation: legal advice during mediation, formal independent legal advice on an agreement or MOU and preparing a binding agreement.

Financial arrangements for unbundling

Respondents described their financial arrangements as follows:

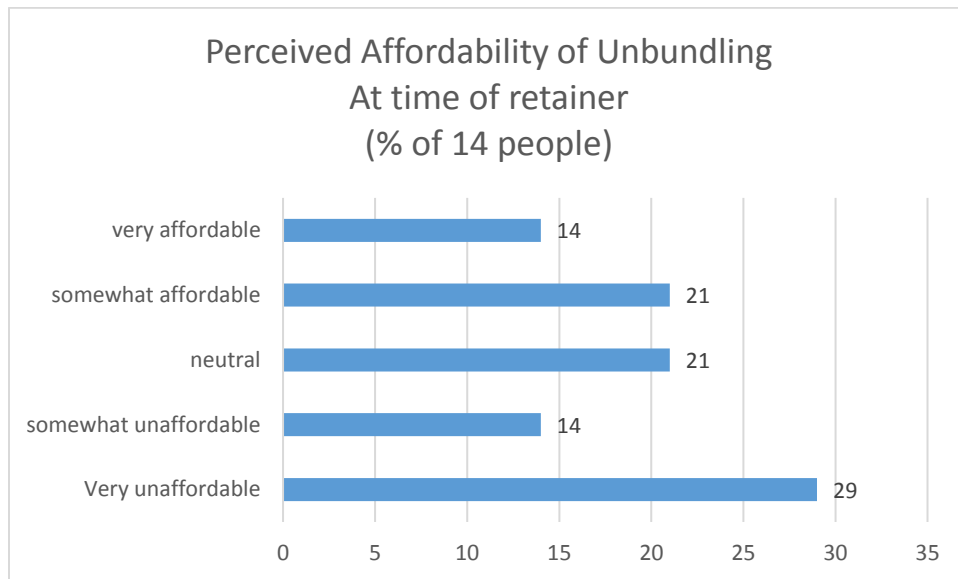


Similar to the lawyer survey results, the vast majority of financial arrangements were based on the hourly rate method.²

One exception was explained by this respondent:

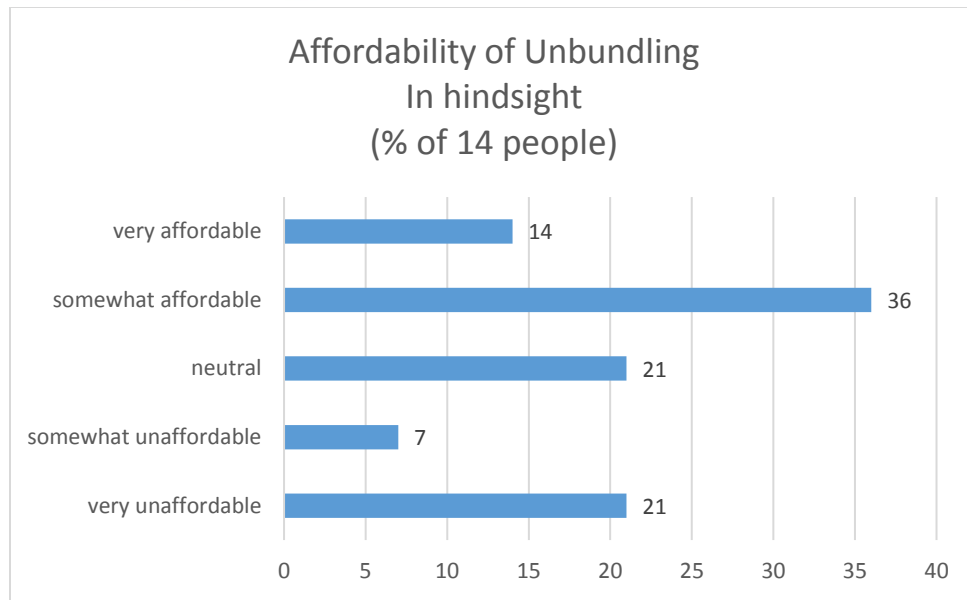
“I paid a flat fee plus I put together the Binder and had the lawyer fact check the information and she presented in Court for 30 minutes.”

Respondents were asked how affordable they felt unbundling was for them a) at the time they retained their unbundled lawyer and b) in hindsight.



Weighted average 2.79 out of 5.

² The “other” category included pro bono or free services (LawLine), explanations of the other answers and one reference to a flat fee for a court appearance.



Weighted average: 3.14 out of 5.

At the time of the retainer 35% of respondents said unbundling was somewhat or very affordable, compared to 50% in hindsight.

The comments on affordability included:

“Even with a discounted rate, and even though I did a lot of work on my own, the amounts added up. I ended up spending \$20,000 on legal fees, in the course of a year. It easily would have been \$100,000 without these arrangements.”

“Certainly more affordable than having him receive all my mail/emails/read everything/advise on everything!”

“If I could afford a lawyer at any rate I would not feel the need to pursue for child support.”

“I wish I knew about this option much much earlier. Too much money was spent in the first part of my divorce (a year’s salary approximately).”

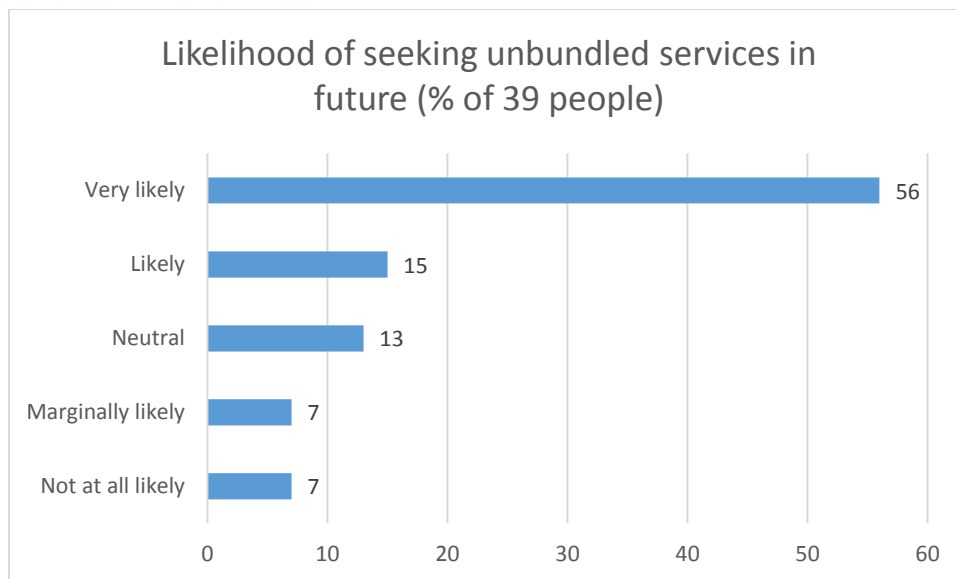
“In hindsight, I was so lucky to have access to these services. I would not have been able to afford it otherwise.”

“This was extremely burdensome because so many court hearings resulted in me paying my ex’s lawyers fees. We were regularly starving for a couple of years. My daughter and I developed on-going health problems.”

“I was really restricted in what I could use the lawyer for.”

Satisfaction with Unbundling

Respondents were asked whether they would seek unbundled services if they were involved in a family dispute in the future.



71% of respondents said they were likely or very likely to seek unbundled legal services for a future family dispute. Those respondents favourable to unbundling (some of whom had ongoing legal disputes) made comments most of which fall into the following categories (in rough order of priority):

1. Unbundling lowers the cost (4)
2. Unbundling allows me to be more in control (3)
3. I am now comfortable to self-represent but I still need the support of unbundling (beyond free services) (4)
4. The help of a lawyer is still needed in some cases beyond the capacity of an SRL (3)

"I make better money now so I could afford to seek some legal advice rather than do it all on my own, but not so much that I would be able to have a lawyer for the whole duration of the process – maybe just to get some help preparing for mediation?"

"I found that law line helped but I walked into court and was blind-sided with the father of my child who claims to have no money but retained a lawyer against me."

"I will simply because I have to."

"I am still looking for some way to file to put new evidence in front of the court, and no one will help. I was recently charged 2000 for a lawyer to review the file, and refuse to help."

"I'm comfortable in the courtroom situation but fell short as I'm not able to do the necessary legal research in order to advance my case."

Those who said they were not likely to use unbundling expressed concern about the quality of unbundled services and supported full representation for everyone. One respondent noted:

"I now know the procedures and have absolutely no use for a lawyer."



Suggestions for system improvement

The last question in the survey invited respondents to make suggestions to improve a BC family's access to effective ways of resolving issues resulting from separation and divorce. Responses fell into the following categories (the number of comments in each subcategory is stated in brackets):

1. System level:
 - a. Focus on the child's best interest (1)
 - b. Reduce acrimony in the system (1)
 - c. Reducing barriers for women in family disputes (2)
 - d. Improved integrity for child support collection agencies (1)
2. Access to legal information:
 - a. Open all courthouse libraries to the public. (1)
 - b. Digital access to all legal information in law libraries (1)
 - c. More resources like JP Boyd's Wikibook – basic information/education (1)
 - d. More accurate tools for calculation of child and spousal support (1)
3. Education:
 - a. Education to increase compassion/empathy, particularly for DV victims (1)
 - b. Education about mental illness (1)
 - c. PAS should be offered online (1)
4. Access to affordable legal services:
 - a. More unbundled services / mandatory for lawyers to explain as an option (2)
 - b. More online information about unbundling (1)
 - c. More pro bono services (1)
 - d. Access to knowledgeable advisors who are not lawyers – tiers of various kinds of legal service providers (1)
 - e. Public servant to deal with standard routine practices like calculation of support (1)
 - f. Family law lawyers should be public servants (1)
 - g. Access to legal advice in cross border issues (1)
5. Access to out of Court options:
 - a. More options that are comfortable, informal and flexible (1)
 - b. Provide more out of court options including mediation (2)
 - c. Make mediation mandatory (2)
 - d. More awareness of and assistance from FJCs and Family justice centres (2)
 - e. Improve effectiveness of mediation; prevent abuse/misuse of the process (1)
6. Rules:
 - a. Improve rules to ensure full disclosure (1)
 - b. Enforce time limits to avoid deliberate delay (1)

7. Courts:
 - a. Two judge benches (one to ask questions; the other to observe) (1)
 - b. Judges who listen to both parties before making decisions; consistence between rulings (1)
 - c. Judges with specific training in family matters (1)
 - d. Child psychologists should be selected by the court and paid through the court to ensure neutrality. And not eligible for order for ongoing support. (1)
8. Advice to family members: “Control your emotions, cut your losses, be gracious and focus on resolving the issues not the discomfort.” (1)

Closing Comments

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

Mediate BC is enormously grateful to the members of the public 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.