



Family Unbundled Legal Services Project Summary of Mediator Survey Responses September 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 mediator survey. While the focus of the project is on using unbundled services to support families using mediation to resolve their issues, the project is keen to learn more about family unbundled services of all kinds. The project's scope does not include child welfare or child protection matters.

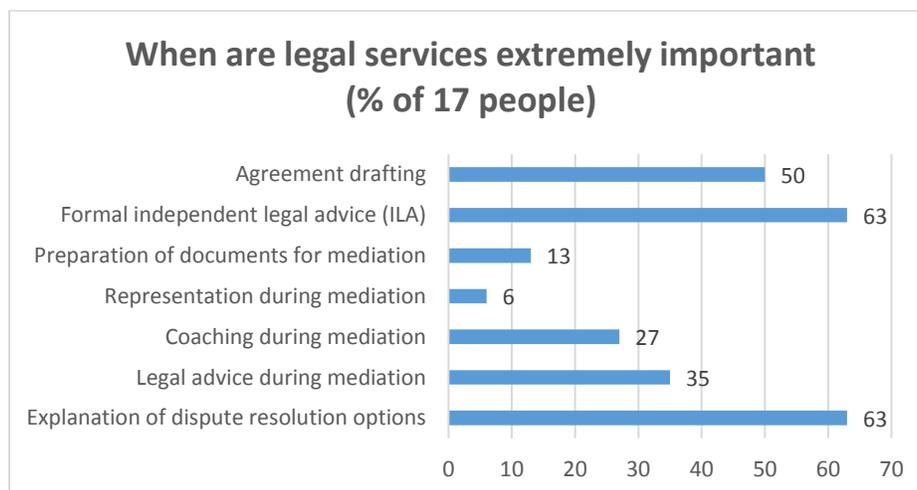
Different terms are used to describe "unbundled legal services" including "limited scope representation" and "limited scope retainer". For the purpose of this survey we used "unbundling" to describe a lawyer providing legal services for a part, rather than the whole, of the client's legal matter. The retainer may be for one or more discrete tasks or for one or more specific issues.

Demographics

We received 17 responses in total. Not all respondents answered all questions. We were grateful for the support of Family Justice Services and more than half of respondents were [family justice counsellors](#). 93% of the respondents were women. Ages ranged from 31 – 70 with an average age of approximately 52. 80% reported living in a city, 13% in a town and 7% in a rural area.

The Importance of Access to Legal Advice

We asked mediators to describe how important it was for parties to have access to legal advice / legal services for various mediation-related steps. The results are shown in this chart:





Respondents prioritized the need for their clients to access legal advice/services at the outset and then at the end of the mediation process. Few emphasized the need for representation during the mediation sessions themselves. A moderate number felt it was important for families to be able to access lawyers for legal advice or coaching as the mediation process continued.

This may be a result, in part, of the large number of family justice counsellors who participated in the survey. They mediate with parents about guardianship, parenting arrangements, contact and support and very few are represented by counsel. Two FJs commented:

People are referred for legal advice throughout (the) process, some access it and some do not.

It is extremely important for parties to have access to legal advice, always. My experience is that if the principles of mediation are applied along with a strong ethical approach, most parties decline legal advice.

We asked what type of person most needs legal services to support them in mediation. The results in rough order of priority were:

- Those who have experienced domestic violence or some other form of significant power imbalance
- Those who have spousal support issues or property division issues
- All people need access to legal advice/services
- Those without knowledge of the system and law (knowledge gives empowerment)
- Those with mental health or capacity issues
- The “working poor”

Types and Frequency of Unbundled Legal Services

Mediate BC’s 2015 Business Survey (of Roster mediators) revealed that 55% of family mediations involved at least one participant who was not represented by counsel. Respondents to this survey reported that almost 100% of their mediation clients attended mediation on their own (without legal representation at the table) and that 75% were not represented at all by counsel. These results are slightly higher than the number of self-represented family litigants in either BC Provincial Court or BC Supreme Court.

We asked respondents what percentage of parties in their family mediations had access to unbundled legal services. Many did not know. The other responses were either:

- Close to 100%; or
- Between 15 and 25%

Those in the first group may be including services provided by duty counsel or Family LawLine (available for free to eligible families and very supportive of families using family justice counsellors).

We then asked how the mediators thought access to unbundled legal services affected their ability to participate effectively in mediation. Three respondents were unsure, one could discern no impact and one suggested that unbundled services assist later if the mediation does not result in an agreement. The majority of the remainder of the respondents identified the benefits of reassurance to the client in their decision-making, particularly before signing an agreement.

All respondents confirmed that they always or sometimes either recommend that unrepresented parties in their mediations seek unbundled legal services or refer parties to these services. FJC respondents confirmed that they always refer clients to the Legal Services Society duty counsel in their offices. Some respondents mentioned the difficulties that arise from unequal access to legal services:

Many clients cannot afford a lawyer to deal with property, assets and debts and lose out on substantial assets. These are the clients that have no access to unbundled legal services for those issues. The party with higher income that can afford a lawyer is usually the winner in these cases. Lower income parties usually lose out.

There are very limited options in the community where I provide service.

85% of respondents said that there were insufficient unbundled services available for parties in their family mediations. They noted with appreciation the support of duty counsel and the Family LawLine but lamented that these services are limited in scope (they do not deal with property division), not all family members meet financial eligibility requirements, there are often wait lists and these services are not available in all communities.

Independent Legal Advice on Agreements

One of the most well-known forms of unbundled services is ILA on a memorandum of understanding (MOU) or agreement created during mediation. 87% of respondents to this survey reported that they draft binding agreements for parties to their mediations.¹ This is not a service provided by LSS duty counsel or Family LawLine. Only 50% of respondents said that there were sufficient lawyers willing to provide ILA in their communities.

They noted that parties frequently decide NOT to seek ILA on an MOU or agreement coming out of mediation. Reasons can include:

- They do not believe it is necessary
 - particularly if the issues are all child-related
 - the agreement is very basic and uncomplicated
 - there is a high level of trust between the parties
- They just want to get it over with and ILA take too much time
- They believe ILA is too costly
- All of the above

¹ Family Justice Counsellors can draft binding agreements on issues within their mandate (guardianship, parenting arrangements, contact and support).



If ILA was more available to their clients on an unbundled basis, 80% of respondents said that their clients would be likely or very likely to seek and obtain ILA.

Mediator Stories

Mediators were asked to provide stories from their mediation practice to illustrate their experience with unbundled family law services. A few helpful stories from family justice counsellors follow:

I had a mediation session break down when parties were discussing child support when one parent felt it was not an obligation. I asked if parties felt it would be helpful to seek advice on the matter - both did and both came back to the table ready to discuss child support and having an understanding of the Child Support Guidelines and legal obligations.

I have ongoing cases where there is property and assets involved, particularly pensions. The clients elect to do the family with us and then went on to work with a lawyer on the other issues, which works out very well. Many clients however, can't afford it and the more 'do it yourself' services don't work for them and Supreme Court is very costly. Many clients find Supreme court self help too much to wade through, as well as access pro bono. They say they will not qualify for Mediate BC but I don't know why.

On occasion, typically through the Rule 5 process, a person may explain that their lawyer has coached them on the First Appearance and FCC process and will be representing them if case goes to trial. I think there is a huge vacuum for legal services in Supreme Court, not even Duty Counsel. Hopefully something can happen there.

I have worked with parents who after mediating went to a lawyer to pay for that lawyer to draw up their legal documents. they wanted to include things I could not due to policy limitations. This was extremely simple and easy for them to do. I have had parents working on negotiating Spousal support where they both had lawyers helping them but not retained and simply on 'standby' to retain if needing to go to court. These parties used their lawyers to consult, get up to date SS advice and make more informed fair decisions with each other.

Suggestions for Improvement

Many respondents identified a need for a roster of private unbundled lawyers. One respondent noted:

FJCs cannot refer to specific lawyers so I suggest they shop around for lawyers who have flexible fees, but we could refer to a roster of lawyers who provide unbundled services. I would refer often if that existed.

One of the goals of this project is to encourage more BC family lawyers to offer unbundled legal services to families AND to create a public-facing list of these lawyers (with key information including fee arrangements) to make them more accessible to the public and to the mediation community.



Other suggestions included:

- Expanding free legal services for property and spousal support issues
- More information and promotion about unbundling
- Increased legal aid funding for family disputes
- To remove or increase financial eligibility requirements for LSS legal advice/coaching when referred by a mediator

One respondent raised an important point about unbundled services to support the mediation process:

The struggle I have with the unbundled services are that there are some lawyers that are supportive and very helpful to the mediation process and some lawyers are not helpful. A lawyer's philosophy, knowledge and attitude towards ADR is key.

The project is exploring the best way to provide some information as part of the list that will assist family members and mediators to choose the unbundled lawyer that best meets the needs of the parties and the situation.

Closing Comments

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

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