

January 17, 2011

Glenn Hainey  
Chair  
Professional Regulation Committee  
The Law Society of Upper Canada  
Osgoode Hall  
130 Queen Street West  
Toronto, ON M5H 2N6

Dear Mr. Hainey,

Re: Unbundling of legal services

Due to the Holiday Season, we did not have our submissions done before now, concerning the unbundling of the legal services. Would you please consider this letter as you consider The Law Society position.

On behalf of the Toronto Lawyers Association, I note that we are in favour of the unbundling of legal services. It is our position that this may well be permissible now pursuant to the Rules of Professional Conduct, but our concern is with our obligation to the Court.

Currently, a lawyer is obliged to file some form of notice with the Court in order to be "on the record". If acting for a plaintiff, this may be as simple as having the lawyer and firm name on the initiating document. On behalf of a defendant, this may be the statement of defence or a notice of intent to defend.

Where a lawyer is retained at a later date, the Court requires a notice of representation, or notice of change of lawyer. Much of this is governed by Rule 15.

However, Rule 15 has no provision allowing a lawyer to file any notice that the lawyer is no longer acting for a party. The party may file a notice of intention to act in person, but otherwise, the lawyer is compelled to bring a motion to be removed as lawyer of record. Rule 15.04 contains the numerous onerous provisions on a lawyer requesting to be removed, and Case Law sets out significant hurdles and grounds for a lawyer to be removed.

The TLA is therefore of the opinion that any discussion concerning the unbundling of legal services must not only involve only the lawyer and the Law Society, but must also involve the Rules Committee.

The TLA asks that the following procedures be considered:

1. A lawyer may file a notice of representation for a party for a specific time. For example, it could be time limited from January – June of a given year.
2. A lawyer may file a notice of representation for a party for a specific event. It could be event limited for the attendance at a specific mediation on a specific date, or a specific examination for discovery on a specific date, as examples.

The TLA asks that consideration be given to allowing a lawyer to unilaterally file a notice that the lawyer no longer represents the client.

The TLA understands that there are professional obligations between the client and the lawyer. If the lawyer improperly uses such a notice, the client will have an appropriate process to complain about the lawyer's actions.

The TLA agrees that its members have obligations to the client, and obligations to the Court, but the lawyer also has obligations to his/her self. If a limited retainer is appropriate, that is an issue between the client and the lawyer, and there must be relief from the current onerous obligations to the Court.

The TLA submits that the unbundling of legal services will allow its members to assist people, and assist those individuals in accessing Justice.

It is also noted that lawyers on occasion try to unofficially assist a member of the public. A problem arises if an opposing lawyer who is "on the record" objects to dealing with the assisting lawyer who is "off the record". The Rules of Professional Conduct could add a note that the lawyer "on record" can quite properly deal with an "off record" lawyer who specifies the limit of his/her authority.

It is also noted that some lawyers try to assist members of the public by attending at specific events. Some Judges allow the lawyer to participate, even though the lawyer is not technically "on the record". Unfortunately, there is no specific provision allowing this, and some Judges have refused or been reluctant to turn a blind eye, particularly when a lawyer "on the record" objects.

The TLA submits that the lawyer acting in a limited capacity assists the Court, as the lawyer helps the system work, but the price cannot be the unfair burden on the lawyer to be relieved of any obligations to the Court once any obligation is undertaken.

The Toronto Lawyers Association thanks the Unbundling Working Group for its efforts in this regard.

Yours very truly,

Nestor E. Kostyniuk  
President of the Toronto Lawyers Association