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Limited Retainer Agreements in Canada

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The cost of a divorce or separation in Ontario is highly prohibitive. A family law matter might require a lawyer to draft letters, affidavits, gather evidence, and prepare a factum among other things. This is not even including the time and cost associated with litigating an issue in court. These things, obviously, take time. As things take more time, they obviously become more expensive as well. One solution lawyers have been experimenting with is limited retainer agreements. Such agreements allow a lawyer to complete a specific task in a client's file, such as drafting a document, without becoming the lawyer's representative for the entire matter. These agreements can allow an individual who perhaps cannot afford to retain a lawyer for their entire matter, at least receive some legal advice on a specific topic.

Legality of Limited Retainer Agreements

Limited retainer agreements have been legal in Ontario since the 1993 case of *Logan v. Logan*. Despite their legality, adoption of limited retainer agreements in Ontario has been slow. This is in stark contrast to the United States where many in many jurisdictions the use of limited retainer agreements have proven to be very popular. Although it was slow to initially be adopted throughout the province there is increasing interest amongst lawyers and clients. The Law Society of Upper Canada has created [draft rules](#), which were created by the working group it formed to investigate the advantages and implications of limited retainer agreements. These types of solicitor-client relationships have the potential to make a substantial change to the legal landscape of Ontario.

Advantages of Such Agreement

The primary advantage of such agreement is the savings in costs. A client may only be able to afford a lawyer for a mediation or negotiation. Using a limited retainer agreement, a client would be able to secure legal services for doing just that. Allowing individuals to obtain some legal advice at a cheaper cost can only increase the efficiency of the family law system as a whole; at least they are receiving some legal education from their lawyer when before they would have none. In most cases, retaining a family lawyer to represent an individual throughout their entire matter is the superior solution. But in situations where such an arrangement is simply not financially feasible, limited retainer agreements offer a viable alternative.

Beyond the savings, individuals may simply prefer to utilize a limited retainer agreement. Some lawyers have become renowned for their skill in various areas, a lawyer may be the recognized



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expert in mediation, while another may be seen as the best person in a jurisdiction for drafting a particular document. This may not be the traditional retainer arrangement, and it may not in fact be the best solution for many individuals, but if it is the retainer arrangement they want; the system should attempt to meet the legitimate desires of clients. Limited retainer agreements offer a different way for lawyers to reach out to new clients.

Difficulties posed by Limited Retainer Agreements

There are some unique difficulties posed by limited retainer agreements. One of the biggest concerns in the legal community is what judge's will perceive. A judge, when they look at a litigant's documents, may incorrectly believe that the lawyer who drafted a document (or did another task) for the client under a limited retainer agreement is representing them for the entirety of their family law matter. This can lead to confusion in the courts and can potentially damage a lawyer's reputation. As limited retainer agreements become a larger part of the legal landscape in Ontario, such confusion will be reduced as judges become more familiar with this particular retainer arrangement. Beyond this trend, lawyers entering into limited retainer agreements should be clear; both in their documents and in their communications with the client about precisely what aspects of the file they will be taking responsibility for. Such clarity is the best tool to reduce any judicial confusion in regard to limited retainer agreements.

Another issue with limited retainer arrangements can be misconceptions on the part of the client. Many individuals may not be completely clear about the limits of their retainer arrangement. Such confusion can create unreasonable expectations of a client and cause them to make mistakes in the pursuit of their issue; they may believe they have the services of a lawyer for a trial when they only retained the services of the lawyer for a mediation or the drafting of a document. The best way to avoid this is to make the terms of the arrangement explicit in the retainer. A responsible lawyer should draw the client's attention to the limitations of their arrangement, and ensure that the client is fully aware of precisely what legal services they are receiving. If the client is properly made aware of the arrangement, then there should be no confusion over what is included in the limited retainer agreement.

Conclusion

Limited retainer agreements could provide a way for individuals to cope with the high cost of family law disputes in the province of Ontario. During these difficult financial times it is important for the legal community to explore options which can allow for greater economic efficiency for clients. Further, any increase in efficiency will benefit the economy as a whole, as an individual with some legal advice is likely to cause less disruption and delay in legal proceedings than a person with no legal advice whatsoever. These benefits cannot be overlooked, and limited retainer agreements may have an important role to play in the Ontario Family Law system of the near future.