R. MICHAEL BIRNBAUM B.A., LL.B
Notary Public / Notario Público
Mailing address: 200 Parkside Place
602 12 Avenue SW Calgary Alberta T2R 1J3
Telephone: (403) 265-9050
e-mail: birnbaum@nucleus.com

ALBERTA LEGAL COACHES AND LIMITED SERVICES
EXAMPLE OF IMPACT IN CIVIL LITIGATION CASE

Lawyers in Alberta usually conduct civil litigation, aside from personal injury, on an hourly fee basis. Given the complexity of civil litigation, many practitioners are senior and their hourly fees substantial, resulting in unaffordability for many ordinary people who may find themselves embroiled in a lawsuit. This can lead to self-representation in the procedurally layered and time-consuming process of civil litigation, with its filing and production requirements, deadlines, questioning and undertakings, interlocutory applications and trial.

The administration of justice slows down for self-represented litigants. Clerks reject their documents for non-compliance more frequently and judges must entertain applications for fiats, extensions of time, and in general spend more time explaining law and process, in the interest of fairness.

As a member of the predecessor organization to Alberta Legal Coaches and Limited Services, I was contacted frequently to provide “unbundled” legal services. This typically consisted of a consultation for summary legal advice, or drafting a court document, such as an affidavit or appearing for a single court application.

I was privileged to act in this way for a group of Defendants sued by a needy Plaintiff whose “Fatal Attraction” resentment over the end of a romantic relationship, re-surfaced after a chance meeting 25 years later.

This rather lengthy civil litigation matter is an example of an angry and histrionic Plaintiff who exploits the legal process to inexpertly accuse a former romantic interest and his group of friends of ruining her life, without much evidence, but requiring energetic defence.

My clients were a group of amateur artists, who retained me on an “as need” basis. “A.B.” had briefly dated the Plaintiff, also an amateur artist, 25 years earlier and when the relationship ended, albeit cordially, the Plaintiff began to harass him, resulting in restraining orders. When the parties encountered each other by chance at an event 25 years later, the Plaintiff again began to harass A.B., his wife and their circle of friends.

A mutual no-contact order ultimately ensued, but the unemployed Plaintiff continued to harass A.B. and his wife using social media, making outrageous claims about their alleged conduct to ruin her career. Not long after, the Plaintiff extended her harassment to A.B.'s artistic associates, claiming they had conspired to have her "blackballed", causing her post-traumatic stress disorder and lost business opportunity.

She issued a frequent torrent of angry social media postings alleging harassment of her and her family members, even religious persecution. The Plaintiff contacted employers of the Defendants as well as prospective organizers of artistic events to spread rumours of the Defendants' imagined wrongs against her. She continued to harangue A.B. and his wife by social media and e-mail.

Some of the Plaintiff's posting did elicit angry reaction, but none was from the Defendants. This did not stop the Plaintiff from blaming them and then citing the angry reactions as their doing in bringing a Court of Queen's Bench lawsuit for defamation, personal injury and loss of business opportunity. In doing so and being unemployed, she had help from a low-income law clinic as well as the time to devote to her lawsuit.

Even the unexplained appearance of damage to her vehicle, was seized upon as a sign of conspiracy for which she amended pleadings and sought additional damages.

None of the parties involved in the lawsuit were wealthy. The Defendants chipped in for my retainer, although I never had carriage of their defence. Defendant "C.D." was a former legal secretary and was familiar with the court process but needed guidance with procedure and drafting documents. To avoid the Plaintiff's constant personal attendance at A.B.'s residence to serve a non-ending series of amended pleadings, Affidavits of Records and other documents, I helped draft an application for a procedural order that included email service on me only and coached C.D. how to apply in court. C.D. made the application successfully in morning Chambers. This, for the most part, ended the Plaintiff's attendances on A.B.'s residence.

However, Plaintiff social media postings and emails only became more irrational and frequent. C.D. consulted with me how to do the Defendant Affidavit of Records highlighting Plaintiff's speculative and irrational Facebook posts and e-mails. Later, C.D. consulted with me on alternatives to litigation. A mediator was proposed and just as the order was to be signed, the Plaintiff rescinded her agreement, on the basis of a fabricated Defendant wrong-doing..

C.D. then consulted with me to review her draft Application for Summary Judgment, based on the speculative and irrational claims made by the Plaintiff, on which basis judgment could not be achieved. C.D. prepared the application

and submissions and consulted with me as to procedure and content. She made the application herself in morning Chambers.

Regrettably, the presiding justice declined to grant the Application for Summary Judgment, but gave a procedural order ending the steady stream of amended pleadings, Affidavits of Records and additional production and granted a timeline for steps in the litigation.

How to deal with needy litigants, I would say in this case a frivolous and vexatious litigant such as the Plaintiff, is always a problem. It is my perception that judges, in the interest of fairness, are more hesitant to impose legal sanction on self-represented litigants as opposed to those with legal counsel. Thus a self-represented irrational Plaintiff was able to harangue her imagined persecutors with legal process they had no choice but to respond to.

Here the Plaintiff acted on her own with amateurish hand-written pleadings claiming substantial damages, a series of amended pleadings and a never-ending stream of Affidavits of Record and production, to support her fabricated claims.

Yet the Defendants were obligated to respond, which C.D. did on their behalf as independently as possible, saving thousands of dollars of legal fees by working with me only to consult, help draft documents and alleviate the Plaintiff's need to attend their residences by accepting service.

My role as "unbundled" or "as needed" legal advisor was available to these hard-working Defendants only as a result of the on-line posting of the predecessor organization's roster of lawyers willing to accept limited scope matters.

I perceived the Defendants as victims of an administration of justice that strives for fairness but can still be exploited by a vexatious self-represented litigant with lots of time and vindictiveness on her hands. I felt satisfied in filling this need for these deserving "unbundled" legal service clients. Without "unbundling", defending this spurious lawsuit would have been prohibitively expensive.