Notice to the Profession

Acting as an Investigator

Nunavut prohibits the unauthorized practice of law. This prohibition extends not only to non-lawyers, but also to lawyers who are members in other jurisdictions. Practicing law in Nunavut without a membership is called unauthorized practice of law and is monitored by the Law Society.

The Law Society has been made aware of individuals without membership acting as investigators with respect to legal disputes in Nunavut.[1] The Law Society has been asked to consider whether acting as an investigator constitutes unauthorized practice.

What is the unauthorized practice of law?

The *Legal Profession Act*, RSNWT (Nu) 1988, c L-2 (the "Act") states in s. 68 that no person shall engage in the practice of law unless he or she is an active member of the Law Society.

Section 1 of the Act provides a definition of the "practice of law." It is very broad and includes "giving legal advice".

Individuals who engage in the practice of law and who are not entitled or permitted to do so engage in the unauthorized practice of law.

What can happen if someone engages in the unauthorized practice of law?

Every person who engages in unauthorized practice is guilty of an offence and liable on summary conviction to a fine not exceeding $5,000 or, in default of payment, to imprisonment for a term not exceeding one year.

If a person is convicted of this offence, the Law Society may also apply and the Nunavut Court of Justice may grant an injunction prohibiting a person from engaging in the practice of law.

In addition, the Law Society may consider other options which may include reporting a person to their "home" law society or writing to the Nunavut Courts advising that a person is not lawfully authorized the practice law in Nunavut.

When do the unauthorized practice provisions intersect with the practice of an investigator?

Investigators who are not members of the Law Society must ensure that they are not engaging in the practice of law when assisting clients.

Investigations can be undertaken in a number of ways – for example, it may be a fact finding investigation, or it may be that a lawyer was hired to conduct a fact finding investigation, along with providing advice as to the legal consequences.

[1] Note: This Notice deals only with investigations completed pursuant to contract or agreement and not those that may be contemplated by statute.

If a lawyer was asked to investigate and perform a fact finding function, regardless of the fact that he or she is a lawyer, he or she would not be providing legal advice and would have been acting as an investigator, not as a lawyer. However, if a lawyer is also asked to make recommendations based on the facts gathered and provide advice with respect to the legal implications of those recommendations, legal advice is being given.

You should carefully review your retainer letter to determine exactly what you are being asked to do and turn your mind to whether you are asked to give legal advice, be it in the form of recommendations or conclusions that certain actions breached legal rules. If you are intending to do a factual review only, and subject to the comments below about disclaimers, you should be clear with the party hiring you that you are not acting as a lawyer and not giving legal advice. In any correspondence you may have, you should make it clear that you are not acting as legal counsel or giving legal advice on matters relevant to your factual investigation.

What if the investigator disclaims to his or her client that he or she does not give legal advice or provide legal services?

The courts will consider the actions of a party to determine whether they have engaged in the practice of law. Merely disclaiming that the investigator does not give legal advice or practice law is insufficient. Calling legal services other names such as "consulting" or "investigative" services will not save a person who, in fact, is giving legal advice. Care should be taken to make sure an investigator's practice does not spill over into the legal arena, unless the investigator is a member of the Law Society.

Where can I find more information about the Act and unauthorized practice?

Visit the Law Society's website for a copy of the Act as well as information about the unauthorized practice of law. Investigators are encouraged to contact the Law Society at administrator@lawsociety.nu.ca.