Notice to the Profession

Mediation

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

At times, people may act as a mediator to assist people in resolving a dispute. At other times, people may represent clients in a mediation. The Law Society wishes to consider whether participation in a mediation constitutes unauthorized practice.

When a person acts as a mediator, the mediator does not need to be a practising lawyer called in Nunavut. The role of the mediator is to assist parties in reaching their own resolution to a dispute. The mediator does not purport to be counsel for any side in the mediation; thus the relationship is different from the standard solicitor-client relationship. In this way, a mediator is analogous to the role of an arbitrator. We refer you to Notice to the Profession- Arbitration.

When a person acts for a client in a mediation, the matter is different. When a person acts for a client in mediation, this is the practice of law and the person must be a practising lawyer called in Nunavut in order to participate in the mediation. Simply put, when acting for a client in a mediation, a person is giving legal advice in how to address the dispute and is appearing as "counsel or advocate" in the mediation.

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" and "appearing as counsel or advocate."

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.

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

Visit the Law Society's website for the Legal Profession Act as well as information about the unauthorized practice of law.

Mediators are encouraged to contact the Law Society at administrator@lawsociety.nu.ca.