Notice to the Profession

Unauthorized Practice of Law

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.

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.

The National Mobility Agreement DOES NOT APPLY in Nunavut

In order to lawfully practice law in Nunavut, you need to either:

1. Get called to the Nunavut Bar in Nunavut after approval for a regular membership; or
2. Obtain a Restricted Appearance Certificate (RAC) from the Law Society of Nunavut and get called to the Nunavut Bar in one's home jurisdiction.

Many lawyers practising in the South are familiar with the National Mobility Agreement, which allows lawyers the ability to practice for a certain period of time in other jurisdictions without a formal call.

The National Mobility Agreement does not apply in Nunavut. Rather, Nunavut is signatory to the Territorial Mobility Agreement (November 2011) which governs permanent mobility to the three northern jurisdictions.

What is the Practice of Law?

The practice of law involves giving legal advice to clients, drafting legal documents for clients, and representing clients in legal negotiations and court proceedings such as family law applications, criminal law representation, and employment negotiations.

Pursuant to the *Legal Profession Act* the practice of law includes, but is not restricted to: appearing as counsel, drawing, revising or settling any pleading for use in any judicial proceeding and giving legal advice.[1]

In assessing whether the services provided by the lawyer or non-lawyer would qualify as the practice of law, it is often important to determine whether the advice provided would attract legal advice privilege. Legal advice privilege is not dependent upon there being litigation in process or even contemplated — rather, what must be present is the provision of legal advice as one of the purposes of the document.

Some examples of the practice of law are:

- Being retained to represent a client in a criminal law, family law, or civil proceeding currently before the Nunavut Court of Justice, or otherwise providing legal advice or legal services involving similar matters;
- Being retained to provide summary advice, and/or assist in the negotiation and resolution of an employment matter. For example: collecting

[1]Section 1 of the *Legal Profession Act*, RSNWT (Nu) 1988, c L-2

information from the client and then sending a letter or calling the employer to discuss a resolution, counselling on the appropriateness of signing a release to the employer, negotiating the appropriate payout of funds in lieu of notice, etc.

Areas of Note:

1. Workplace Investigations – Notice to the Profession June 2020
2. Arbitration – Notice to the Profession June 2020
3. Mediation – Notice to the Profession June 2021
4. Communication with Staff, Social Media and Professional Responsibility – CEO Notice to the Profession June 2021

A Member's obligation to prevent the unauthorized practice of law

The Code of Professional Conduct

7.6 A lawyer must assist in preventing the unauthorized practice of law.

Commentary [1] Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the lawyer-client privilege, the lawyer's duty of confidentiality, the professional standard of care that the law requires of lawyers, and the authority that the courts exercise over them. Other safeguards include mandatory professional liability insurance, the assessment of lawyers' bills, regulation of the handling of trust monies and the maintenance of compensation funds.

What should members do if they encounter a lawyer that they believe is not licensed in Nunavut?

The member should forward the name of the individual to the Law Society of Nunavut (LSN) and any available contact information or jurisdiction of practice. The LSN values the wishes of its members to remain anonymous and full anonymity will be provided upon request. The LSN relies on the disclosure of such practices to ensure the enforcement and regulation of the practice in Nunavut, and therefore strongly encourages members of the bar and the public to report any concerns.

Upon receiving a concern, the LSN will provide a response to the member of the bar or public within three (3) business days and advise of the following:

1. Confirmation as to the status of license;
2. Action taken on behalf of the LSN (if any), including: contact with the lawyer to advise of the restricted practices and provide information for the lawyer to obtain one of the designations; or if the circumstances dictate action, send a cease and desist letter to the lawyer; and
3. Details and instructions on how the member should proceed.

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

Section 71 of the *Legal Profession Act* provides that those engaged in the unauthorized practice of law may be prosecuted.

When the LSN is made aware of an individually who may be engaging in the practice of law illegally, the LSN may take one or more of the following actions:

1. Place a courtesy call to the person and provide information regarding the licensing requirements in Nunavut;
2. If the first step is unsuccessful, sending a cease and desist letter demanding that the person stop providing legal services they are not licensed to provide. This is often successful;
3. Ask the person to sign an undertaking to cease the unauthorized activity;
4. Conduct an investigation if the person is persistent or placing the public directly at risk;
5. Advise the Nunavut Court of Justice if the person has not taken steps to be licensed or alternatively, has not ceased and desist;
6. File a complaint with the home jurisdiction;
7. Initiate court proceedings.