

Who are non-Nunavut Lawyers?

The views of the LSN in this notice apply to non-Nunavut lawyers. This is meant to apply only to lawyers called in other Canadian jurisdictions but not called in Nunavut.

This does not apply to articling students in other jurisdictions.

Also, consistent with Rule 6.1-4 and s. 70 of the Act, if a non-Nunavut lawyer is suspended or disbarred, they are not able to provide legal services with a Nunavut lawyer.

Rule 6.1-1 of the Code of Professional Conduct

For the LSN, the way to address members practising with non-members in providing legal services in Nunavut is to use s. 6.1 of the Code of Professional Conduct.

Rule 6.1-1 of the Code reads:

6.1-1 A lawyer has complete professional responsibility for all business entrusted to him or her ***and must directly supervise staff and assistants to whom the lawyer delegates particular tasks and functions.***

Rule 6.1-3 of the Code reads:

Delegation

6.1-3 A lawyer must not permit a non-lawyer to:

(a) accept cases on behalf of the lawyer, except that a non-lawyer may receive instructions from established clients if the supervising lawyer approves before any work commences;

(b) give legal advice;

(c) give or accept undertakings or accept trust conditions, except at the direction of and under the supervision of a lawyer responsible for the legal matter, providing that, in any communications, the fact that the person giving or accepting the undertaking or accepting the trust condition is a non-lawyer is disclosed, the capacity of the person is indicated and the lawyer who is responsible for the legal matter is identified;

(d) act finally without reference to the lawyer in matters involving professional legal judgment;

(e) be held out as a lawyer;

(f) appear in court or actively participate in formal legal proceedings on behalf of a client except as set forth above or except in a supporting role to the lawyer appearing in such proceedings;

(g) be named in association with the lawyer in any pleading, written argument or other like document submitted to a court;

(h) be remunerated on a sliding scale related to the earnings of the lawyer, unless the non-lawyer is an employee of the lawyer;

(i) conduct negotiations with third parties, other than routine negotiations if the client consents and the results of the negotiation are approved by the supervising lawyer before action is taken;

(j) take instructions from clients, unless the supervising lawyer has directed the client to the non-lawyer for that purpose and the instructions are relayed to the lawyer as soon as reasonably possible;

(k) sign correspondence containing a legal opinion;

(l) sign correspondence, unless

(i) it is of a routine administrative nature,

(ii) the non-lawyer has been specifically directed to sign the correspondence by a supervising lawyer,

(iii) the fact the person is a non-lawyer is disclosed, and

(iv) the capacity in which the person signs the correspondence is indicated;

(m) forward to a client or third party any documents, other than routine, standard form documents, except with the lawyer's knowledge and direction;

(n) perform any of the duties that only lawyers may perform or do things that lawyers themselves may not do; or

(o) issue statements of account.

Commentary

[1] A lawyer is responsible for any undertaking given or accepted and any trust condition accepted by a non-lawyer acting under his or her supervision.

[2] A lawyer should ensure that the non-lawyer is identified as such when communicating orally or in writing with clients, lawyers or public officials or with the public generally, whether within or outside the offices of the law firm of employment.

Applying Rule 6.1 of the Code

In order to protect the public and allow for the delivery of legal services to citizens of Nunavut, the LSN is prepared, until further notice, to apply the above rule when a lawyer called elsewhere in Canada is involved in what would otherwise be the unauthorised practice of law under the Act.

There **must be** a Nunavut called lawyer on a file when providing legal services in Nunavut. Lawyers called elsewhere in Canada can participate in this file if supervised by the Nunavut lawyer. If a Nunavut lawyer decides to provide legal advice in Nunavut with a non-Nunavut lawyer, the Nunavut lawyer must be prepared to directly supervise and be responsible for the actions or inactions of their non-Nunavut colleague.

In this way, the LSN is able to regulate the provision of legal services by taking such steps under the Act against the Nunavut lawyer, including discipline, if the circumstances warrant.

The LSN wishes to add the following information in how it intends to apply Rule 6.1-3 to non-Nunavut lawyers when acting with a Nunavut lawyer.

File Intake and Taking Instructions - Rule 6.1-3(a), (j): The Nunavut lawyer should be the one accepting a case from the outset. They should be the point of contact and face for the client. The Nunavut lawyer can use a non-Nunavut lawyer to take instructions but the instructions must be relayed to the Nunavut lawyer as soon as possible. There may be instances where a Nunavut lawyer is called in to act as “agent” for a non-Nunavut lawyer. The client should be aware who the Nunavut lawyer is and that both the Nunavut lawyer and the non-Nunavut lawyer shall be issuing accounts to the client. The client should also be aware that advice on Nunavut matters must come through the Nunavut lawyer. The client should consent to the fact that there is a Nunavut lawyer and non-Nunavut lawyer engaged in their case.

Identifying the Non-Nunavut Lawyer - Rule 6.1-3(e): The non-Nunavut lawyer should not be held out as a lawyer able to practice in Nunavut. The client should know who the Nunavut lawyer is and that the Nunavut lawyer is responsible for the legal services provided even if a non-Nunavut lawyer is working on the file. The Nunavut lawyer may need to explain to the client that the non-Nunavut lawyer cannot appear in court and cannot negotiate matters on their own for the client.

Advice comes from the Nunavut Lawyer - Rule 6.1-3(b), (c) (d), (i), (k) (l) (m):

- The Nunavut lawyer is ultimately the one who is providing legal advice. While a non-Nunavut lawyer may play an important role in assisting the Nunavut lawyer, it is the Nunavut lawyer who is providing the advice to the client.
- Trust conditions and undertakings should be given by the Nunavut lawyer only.
- A non-Nunavut lawyer’s negotiations with third parties needs to be supervised and approved by the Nunavut lawyer. The best approach is when involved in calls or video conferences with a third party (but excluding the court), the Nunavut lawyer must be present with the non-Nunavut lawyer.
- Correspondence to third parties should come from the Nunavut lawyer or they should approve the correspondence and allow it to be sent by the non-Nunavut lawyer. The Nunavut lawyer **must** be copied on such correspondence.
- Legal opinions must always come from the Nunavut lawyer.

Only Nunavut Lawyers in Nunavut Courts - Rule 6.1-3(f), (g) (n): Only Nunavut lawyers should be appearing in Nunavut courts or administrative tribunals. The Nunavut lawyer should be the one making submissions and be the one identified as counsel on submissions. The non-Nunavut lawyer should not make submissions in a Nunavut court or tribunal or be on submissions or they risk being engaged in the unauthorized practice of law. While courts and tribunals may control their own process and may allow a non-Nunavut

lawyer to make submissions, that is a decision of the court or tribunal. It does not affect the LSN's position that the non-lawyer is engaged in the unauthorized practice of law.

Fees - Rule 6.1-3 (h), (o): Statements of account should be sent by the Nunavut Lawyer. It may include time by the non-Nunavut lawyer. The LSN takes no position on taxing of fees of non-lawyers under the Nunavut Rules of Court.