

Information form



Unauthorized practice of law

What is the unauthorized practice of law?

Under section 15 of the *Legal Profession Act*, only practising lawyers may engage in the practice of law. The practice of law is defined as including a variety of legal services, as well as giving legal advice and drafting documents to be used in judicial or extrajudicial proceedings or proceedings under a statute. It is not the practice of law if a person performs these acts for free or without the expectation of a benefit.

Persons 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?

Under section 85, the Law Society may apply and the Supreme Court may grant an injunction prohibiting a person from engaging in the practice of law.

When do the unauthorized practice provisions intersect with the practice of a mediator?

Mediators who are not practising lawyers must ensure that they are not engaging in the practice of law when assisting clients. Mediators are paid to assist parties to come to an agreement. When assisting clients to reach an agreement, a mediator must be careful not to advise participants on the law or their legal rights as doing so may lead the mediator to be “giving legal advice” and therefore run afoul of the *Legal Profession Act*.

Mediations often lead to mediated agreements, which are a form of contract. A fine line exists between merely charting the parties’ wishes into a mediated settlement and advising them on their legal rights. The courts have held that drafting enforceable contracts for clients implicitly requires someone to provide legal advice. As mediators are being paid for their services, a mediator may run afoul of the *Legal Profession Act* when advice is given to the parties on the structure and effect of the mediated agreement. Care should be taken not to advise clients on how to structure their agreement.

This fine line emphasizes the importance of advising clients to seek independent legal advice after the mediation has concluded. Each party to a mediation should take the memorandum of agreement to an independent lawyer for advice on the settlement and to draft the final agreement.

If the clients rely on the memorandum of agreement, the mediator who drafted the agreement may have engaged in the practice of law, especially if the agreement is filed in court or pursuant to a court proceeding.

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

The courts will look into the actions of a party to determine whether they have engaged in the practice of law. Merely disclaiming that the mediator is not a lawyer and does not give legal advice is insufficient. Calling legal services other names such as “consulting,” “legal information” or “mediation” services will not save a person who, in fact, is giving legal advice or drawing documents under statute. Therefore, care should be taken to make sure a mediator’s practice does not spill over into the legal field, unless the mediator is also a practising lawyer.

What if I’m a practising lawyer who is also a mediator?

The Code of Professional Conduct specifically addresses the duties and responsibilities of lawyers who act as mediators. Such individuals should review section 5.7 of the Code and Appendix B which specifically deals with family law mediations, arbitrations and parenting coordination.

Where can I find more information about the *Legal Profession 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’s unauthorized practice department at uap@lsbc.org.

A mediator may wish to consult with a lawyer regarding the services he or she wishes to offer to clients.