

INVESTIGATION UNIT

Comparison of Provincial and Territorial Requirements for Investigators

Because the Investigation Unit is targeting national sport organizations and the investigations to be conducted for those clients have the potential to be of national scope, the SDRCC sought a legal opinion regarding the provincial and territorial laws on the conduct of investigations. This document provides an overview of such legal opinion, obtained on October 31, 2018.

1. License Required to Conduct an Investigation

According to a legal analysis of provincial and territorial private security laws, the investigator must always be licensed from the province or territory where the client is domiciled. For example, a sport organization from Alberta could only retain the services of a licensed investigator from Alberta. This rule applies in all provinces and territories, with the exception of the Northwest Territories and Nunavut where there is currently no law governing investigative services.

Indeed, the purpose of private security laws is to govern an economic activity. Licenses granted under these laws allow investigators to provide investigative services for compensation. The general definition of a private investigator is “a person who investigates and furnishes information for hire”. When an investigation is conducted free of charge, a license is not generally required. These elements suggest that it is important to consider in which province or territory the organization that pays for the services is domiciled. In our opinion, the investigation is carried out in this province or territory and the investigator must be licensed from this same province or territory.

2. Permission Required to Conduct Part of an Investigation Outside the Province or Territory

Considering the reality of sport organizations, events under investigation may have occurred outside the client’s province or territory. It is also possible that the witnesses come from different locations in Canada. Thus, an investigator may be required to travel as part of the investigation. Before traveling to another province or territory, the investigator must be aware of the law in force and the necessity to first obtaining a temporary exemption, including when interviews and other investigation activities are conducted in other jurisdictions using different modes of communication (e-mail, telephone, Skype, etc.)

2.1. Exemption granted in Manitoba, Nova Scotia, New Brunswick, Ontario, Prince Edward Island, Quebec and Yukon

Yukon and most provinces permit investigators licensed from another Canadian province or territory to conduct part of an investigation in their jurisdiction, without further authorization. Manitoba, Nova Scotia, New Brunswick, Ontario, Prince Edward Island, Quebec and Yukon provide such exemptions, as set out in Appendix “A”.

As a result, investigators can freely continue an investigation in these jurisdictions. They may interview witnesses located in these provinces and territory, by going on-site, by telephone or by e-mail. For example, under these laws, an investigator licensed from British Columbia who is investigating for a sport organization based in British Columbia may travel to a sport competition site in Ontario and interview all athletes present. No permission from the Ontario registrar is required.

2.2. Temporary Exemption Required in Alberta, British Columbia and Saskatchewan

The provinces listed in Appendix “B” require a temporary exemption to investigate within their territory, except for lawyers to whom the law expressly grants an exemption. In British Columbia and Saskatchewan, permission from the provincial registrar must be granted before the investigation can be continued inside that province. The same applies in Alberta, where the registrar may exempt a person from holding a license issued by that jurisdiction.

Such temporary exemption is only required when an investigator wants to travel in one of these three provinces to continue his or her investigation. For example, a Quebec investigator who wishes to travel to Alberta to interview members of a sport team will require an authorization from the Alberta registrar. However, this Quebec investigator will not have to obtain permission from the registrar to interview members of the Alberta team by telephone or by e-mail. Indeed, the law stipulates that a private investigator must notify the registrar of his or her presence in the province. It is this event that requires him or her to obtain a temporary exemption. By using expressions such as “comes into” and “enters” the province, the law seems to refer to the action of traveling and actually be physically in the province.

Therefore, a temporary exemption is only required to investigate in person in Alberta, British Columbia and Saskatchewan.

APPENDIX "A"

Province / Territory	Law	Sections
Manitoba	<i>Private Investigators and Security Guards Act</i>	<p>2 This Act does not apply to</p> <p>(a) barristers or solicitors in the practise of their profession or their employees; [...]</p> <p>(h) persons residing outside the province who are bona fide employees of private investigation or security guard agencies licensed or registered in a jurisdiction outside the province who</p> <p>(i) on behalf of an employer or client who resides outside the province, make an investigation or inquiry partly outside the province and partly within the province, and</p> <p>(ii) come into the province solely for the purpose of such investigation or inquiry; [...]</p>
New Brunswick	<i>Private Investigators and Security Services Act</i>	<p>2 This Act does not apply to</p> <p>(d) a person residing in another jurisdiction who is authorized by the law of that jurisdiction to engage in the business of providing the services of a private investigator or security guard, if that person</p> <p>(i) on behalf of a client who resides outside the Province, makes an investigation partly outside the Province and partly within the Province, and</p> <p>(ii) comes into the Province solely for the purpose of that investigation; [...]</p>
Nova Scotia	<i>Private Investigators and Security Guards Act</i>	<p>3 This Act does not apply to</p> <p>(a) barristers or solicitors in the practice of their profession or their employees; [...]</p> <p>(j) persons residing outside the Province who are <i>bona fide</i> employees of private investigation or private guard agencies licensed or registered in a jurisdiction outside the Province who</p> <p>(i) on behalf of an employer or client who resides outside the Province, make an investigation or inquiry partly outside the Province and partly within the Province, and</p> <p>(ii) come into the Province solely for the purpose of such investigation or inquiry.</p>

Province / Territory	Law	Sections
Ontario	<i>Private Security and Investigative Services Act, 2005</i>	<p>2 (7) This Act does not apply to,</p> <p>(a) barristers or solicitors engaged in the practice of their profession; [...]</p> <p>(f) persons residing outside Ontario who are licensed employees of a private investigation agency licensed or registered in a jurisdiction outside Ontario, but elsewhere in Canada who,</p> <p>(i) on behalf of a person situated outside Ontario, make an investigation or inquiry partly outside Ontario and partly within Ontario, and</p> <p>(ii) come into Ontario solely for the purpose of such investigation or inquiry; [...]</p>
Prince Edward Island	<i>Private Investigators and Security Guards Act</i>	<p>2 This Act does not apply to</p> <p>(a) barristers, solicitors and attorneys in the practice of their profession or their employees; [...]</p> <p>(j) persons residing outside the province who are genuine employees of private investigation or private guard agencies licensed or registered in a jurisdiction outside Prince Edward Island who</p> <p>(i) on behalf of an employer or client who resides outside Prince Edward Island, make an investigation or inquiry partly outside Prince Edward Island and partly within Prince Edward Island, and</p> <p>(ii) come into Prince Edward Island solely for the purpose of that investigation or inquiry.</p>
Quebec	<i>Private Security Act</i>	<p>2 This Act does not apply to activities referred to in section 1 when carried on by the following persons:</p> <p>(9) persons licensed or otherwise authorized to carry on investigation activities outside Québec who must conduct part of an investigation in Québec; [...]</p>
Yukon	<i>Private Investigators and Security Guards Act</i>	<p>2 (2) This Act does not apply to a barrister and solicitor in the regular practice of their profession.</p> <p>5 (2) When a person who resides outside the Yukon, and is employed there by or on behalf of an employer or client who resides outside the Yukon, makes an investigation or inquiry partly outside the Yukon and partly in the Yukon and temporarily comes into the Yukon solely for the purpose of that investigation or inquiry, nothing in this section requires that person or the person's employer to be the holder of a licence under this section so long as the work of that person in the Yukon is restricted to the making of the investigation or inquiry for which the person was employed outside the Yukon.</p>

APPENDIX "B"

Province	Law	Section
Alberta	<i>Security Services and Investigators Act</i>	<p>10 The following persons and classes of persons are exempt from the requirement to be licensed under this Act and the regulations: [...]</p> <p>(b) barristers and solicitors acting within the scope of their profession;</p> <p>11(1) The Registrar may exempt a person from holding a licence if the person</p> <p>(a) resides in a jurisdiction outside Alberta and is employed or engaged for services in good faith in that jurisdiction by or on behalf of an employer or client who resides outside Alberta, to carry out an investigation or inquiry partly outside Alberta and partly in Alberta,</p> <p>(b) wishes to carry out a temporary investigation or inquiry in Alberta solely for the purpose of an investigation or inquiry described in clause (a)</p> <p>(c) notifies the Registrar of his or her intended presence in Alberta and provides the Registrar with particulars of the work he or she proposes to undertake, and</p> <p>(d) applies for an exemption in the form and manner required by the Registrar.</p>
British Columbia	<i>Security Services Act</i>	<p>10 (1) The registrar may grant an exemption from the requirement to hold a security worker licence if an individual</p> <p>(a) is a private investigator licensed or registered in a jurisdiction outside British Columbia,</p> <p>(b) conducts or continues an investigation inside British Columbia on behalf of an employer or client outside British Columbia, and enters British Columbia solely for the purpose of that investigation,</p> <p>(c) notifies the registrar of his or her presence in British Columbia and supplies the registrar with particulars of the work he or she proposes to undertake, and</p> <p>(d) applies for the exemption in the form and manner required by the registrar.</p>
	<i>Security Services Regulation</i>	<p>2 (2) The following persons are exempt from the requirement in section 2 of the Act to hold a security worker licence and the requirement in section 11 of the Act to hold a security business licence: [...]</p> <p>(h) barristers or solicitors in the practice of their profession; [...]</p>

Province	Law	Section
Saskatchewan	<i>Private Investigators and Security Guards Regulations, 2000</i>	<p>3 For the purposes subsection 3(2) of the Act, the following classes of persons are exempt from the provisions of the Act: [...]</p> <p>(b) lawyers while engaged in the regular practice of their profession; [...]</p> <p>4 The registrar may, at his or her discretion, grant a temporary exemption from the licensing requirements of the Act and these regulations to a person residing outside Saskatchewan who:</p> <p>(a) is licensed and registered as a private investigator in a jurisdiction outside Saskatchewan or is employed by a private investigator licensed and registered in a jurisdiction outside Saskatchewan;</p> <p>(b) on behalf of a client or employer outside Saskatchewan, makes an investigation partly inside Saskatchewan and comes into Saskatchewan solely for the purpose of that investigation; and</p> <p>(c) notifies the registrar of his or her presence in Saskatchewan and supplies the registrar with particulars of the work he or she proposes to undertake.</p>