

The Pseudo-Lawyer: A Financial Professional is Not a Lawyer

By Albert S. Frank, LL.B.

A little learning is a dangerous thing; Drink deep, or taste not...

*Alexander Pope
An Essay on Criticism*

The less you know, the simpler things seem. To a bright person like a successful financial professional, law can look simple.

But before you start seasoning your financial advice with sprinklings of legal advice, here are some legal points you might want to know.

A Lawyer's Standard

When you give legal advice, or take on a legal task, it is not enough that you do so with the legal knowledge and expertise typical of someone in your profession. You are legally responsible to act with the full knowledge and expertise of a qualified lawyer.

A few years ago I sued various persons in

a real estate deal, including the purchasers' former lawyer and a real estate agent. The real estate agent had drafted the Agreement of Purchase and Sale poorly, and the lawyer implemented the Agreement without seeking to improve it.

The Court of Appeal ruled that the lawyer was not liable. The Agreement had been signed before it reached him, and it was not his duty to try to renegotiate a deal that was already signed.

The real estate agent, on the other hand, was liable. He had chosen to take on a legal task, the drafting of a contract, and was therefore responsible for doing so with a lawyer's level of knowledge and expertise.

The same principle would apply to financial professionals giving legal advice or handling legal tasks.

Hedley Byrne

Your liability could be not just to your clients, but also to other persons. You are unlikely to perform a legal task for a non client, but what about the giving of legal information or advice?

The case of ***Hedley Byrne & Co. v. Heller and Partners Ltd.***, [1964] A.C. 465 and the later cases following it have established that a special relationship can exist that gives rise to a duty of care. If you fail in the duty of care you can be liable for a resulting financial loss.

There is such a “special relationship”

if: ■ someone seeks guidance from you;

- you know or should know that the seeker of advice intends to rely on the information or advice you give;
 - the seeker implicitly trusts you to act with a reasonable measure of care; and
- you have not made an effective disclaimer.

This could even apply to advice sought and given at a party, if despite the informality of the setting you know or should know that the seeker intends to rely on what you say, and the seeker implicitly trusts you to act with care in what you say.

This is why I make a point of telling people – absolutely truthfully – that I can give a

meaningful opinion only after I have seen their documents.

Unauthorized Practice of Law

The Law Societies of the various provinces set the rules as to who is – and who is not – entitled to practice law in their jurisdictions. Anyone else practicing law in the jurisdiction should expect unwelcome attention from the Law Society, and possibly a prosecution.

Moreover, if the legal work includes acting for others in lawsuits, this could be punished as a contempt of court. Fortunately, as a financial professional you probably do not see yourself as a courtroom advocate. You are more likely to stray into the legal domain in the area of advice.

Please remember that what seems practical is not always legal.

For example, some accountants tell their clients not to bother doing the annual corporate resolutions and filings. This advice is obviously contrary to corporate law, but some accountants think it practical.

They are apparently unaware that a few years of undone resolutions and filings can

cause difficulty and unnecessary expense when the company is sold, since the buyer will no doubt demand a correct, up-to-date minute book. Moreover, if I – or another lawyer in such a situation – were suing management on behalf of a minority shareholder, any lack of resolutions and filings would be used to attack management's credibility.

Conclusion

I would not dream of giving financial advice – that is what accountants and other financial professionals are for. You should be careful not to slip into giving legal advice – that is what lawyers are for.

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The above article originally appeared in the January, 2002 issue of ***The Bottom Line***.

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Research has NOT been done to see if this article is still good law. Also, this is general information that might not apply to your particular situation.

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