

Retaining Forensic Specialists

The MNP Forensic and Litigation Support Guidance Series

MNP LLP's Forensic and Litigation Support team provides its clients with a comprehensive suite of reactive and proactive services designed to address an array of situations faced by organizations and individuals.

This publication is intended as a guide for organizations, legal counsel, or individuals who are considering retaining a forensic accountant. It outlines the types of services provided and the situations where they might be required. It also discusses the professional standards which guide our engagements.

Selection of a service provider should be based on an assessment of the relevant person(s) qualifications, experience and skills in the context of the anticipated engagement and the unique circumstances surrounding it.



Who might engage forensic and litigation support services?

Any person or organization - for instance, an individual, corporate entity, law enforcement or government agency.

Matters in which forensics and litigation support teams are retained

➤ Reactive Engagements



Investigations

We conduct fact-finding investigations into financial irregularities, fraudulent activity, and commercial negligence. Our findings help our clients make informed and difficult decisions about wrongdoing, fraud and misconduct.

Common areas of investigation are:

- Workplace investigations involving employees, managers and third parties;
- Regulatory and criminal investigations;
- Professional negligence and misconduct investigations;
- Investigations into occupational and investment frauds such as Ponzi schemes.

Triggers: Suspicions of fraud, employee misconduct, regulatory issues and alleged criminal activity, shareholder disputes, financial irregularities, allegations of bullying, harassment and other wrongdoing, cyber breach, conflict of interest concerns, anti-money laundering (AML) issues, concerns of unethical or irregular behaviour.



Litigation support

We provide insight and analysis into an organization's business activities to answer financial concerns for the parties in litigation. This might be in the context of a shareholder dispute, commercial dispute or regulatory matter. Our work commonly involves:

- Identifying the extent and quantum of payments to specific parties;
- Building and reviewing complex financial models quantifying economic damages such as loss of profits;
- Reviewing complex transactions and providing simple, straightforward explanations;
- Analysing large volumes of records and data and presenting it in a structured format designed to assist the parties to the litigation.

Triggers: Commercial disputes, shareholder disputes, damage quantification, business interruption claims, asset identification and tracing, Anton Piller orders and Mareva Injunctions, data analytics.



Family law matters

Dealing with financial issues following a marital breakdown is challenging. The issues can be significant, but even relatively minor matters can be clouded by a lack of or too much information, not knowing where to look for details, or what to do with the information once it has been collected.

We can help our clients and their legal counsel navigate unfamiliar accounting territory. To help resolve disagreements, our team provides advice, calculations and in-depth reports to clarify the financial position of the parties involved.

Triggers: Divorce, estate disputes, guideline income, dissipation of assets, income determination, division of assets, asset identification and tracing.





Digital forensics investigations

We collect the electronic evidence that tells the story for you. MNP's Forensics and Litigation Support team will preserve, analyze and report on computer evidence to standards required for criminal or civil proceedings. Our services include imaging of devices, reviewing and recovering deleted items and undertaking searches of digital files for items relevant for the investigation / litigation.

Triggers: Allegations or concern about fraud, bribery, theft of intellectual property, or workplace misconduct such as harassment, computer misuse and unauthorized access to computer systems.



Insurance matters

Restoring a damaged property or business to its pre-event condition is a complex process. There are numerous factors and scenarios to consider when determining the value of the damage to the property or business. MNP's Insurance Services is an independent voice recognized by insurers and insured alike. We draw on the knowledge of our nation-wide pool of team members experienced in a broad range of industries to help quantify insurance claims and losses.

In addition to assisting with insurance claims and losses, our team provides proactive services. We provide an independent review and use a proven maximum probable loss scenario modeling process to ensure appropriate insurance limits are in place.

Triggers: Events which cause property losses and interruption to business activities, natural disasters such as forest fire, flood, storms, drought, human-caused crisis such as explosions, arson, strikes, blockades, and fraud.

> Proactive Engagements



Anti money laundering (aml) compliance

Ensure your organization meets and complies with Canadian anti-money laundering regulations and the requirements of your financial institution. To manage and reduce your compliance risk with domestic and international AML rules, we offer the following:

- Compliance program development
- AML compliance effectiveness review
- Transaction monitoring and reporting
- Operational due diligence
- Look-backs and remediation



Fraud risk management

MNP provides fraud risk reviews which assist in ensuring organizations are adequately protected. Services include the comprehensive assessment of an organization's fraud risks, review of controls to protect against the risk and recommendations for improvements to further limit the risk of fraud.



Whistleblower hotline service

MNP's Ethics Alert Hotline service helps protect your business and reputation by fostering integrity. The service provides a secure, anonymous and easy-to-use channel for employees and other stakeholders to report incidents of unethical or irregular activity and to express their concerns or suggestions for improvement.

It also increases the likelihood of early detection of issues and offers more time to effectively manage threats, mitigate damages and defer future events. Our service includes:

- The implementation of a telephone hotline, web portal and text / email / fax service which allow anonymous reporting of concerns;
- 24/7, 365-day monitoring;
- Awareness training;
- Customized reporting to designated persons in an organization including threat assessments and response planning.



Insurance Policy Review

MNP provides insurance policy review, coverage wording review and insurance values quantification in order to ensure your coverage matches your environment, risks, and needs.



Roles of an integrated forensic and litigation support team

When working with clients and their legal counsel, the typical role of a forensic and litigation support team is that of independent experts. The team ultimately has a duty to the court to objectively gather and present facts which are intended to provide clarity to the matter so that informed decisions can be made.

In other situations, the role of a forensic and litigation support team might be as consultants engaged to provide advice and analysis to guide aspects of a litigation. Acting in this role may preclude the team from acting as a testifying expert in the same matter, i.e. as independent experts.

Finally, the role a forensic and litigation support team might play in a non-litigation environment can be:

- To assist in ensuring compliance with regulatory standards; or
- Assisting in designing and implementing fraud risk management plans.

MNP's integrated team adds a wealth of expertise in investigative and forensic accounting, litigation support, wrongdoing investigations, digital forensics and regulatory matters. Our team includes forensic accountants and fraud examiners, former law enforcement officers, anti-money laundering specialists and digital forensics specialists. We provide layered expertise and a balanced approach that recognizes each engagement has unique features to be considered in the context of the law and other regulations and agreements.

Defining the assignment

Each engagement is planned for individual clients and their unique situation(s). We take a phased, agile approach to ensure all points covered remain relevant and are communicated in a timely manner. This provides some certainty to clients during what can be a stressful time and enables them to make informed decisions as the engagement progresses.

To properly and efficiently structure the engagement, an engagement agreement, typically in the form of a letter, should be put in place. The engagement agreement should cover key aspects of the engagement as well as allowing flexibility for the inherent uncertainty commonly associated with forensic and litigation support engagements.

When considering the engagement letter, attention must be paid to who, or how, forensic and litigation support services teams are to be retained as this impacts the form of the engagement agreement and the legal protections provided by it. Forensic and litigation support teams might be engaged as follows:

- Directly by the client;
- Through legal counsel to help maintain privilege;
- Jointly retained by the parties to a matter or by the parties' legal counsel;
- Directly retained by the court.

Once the person / parties retaining the forensic and litigation support team are determined, common areas contained in the engagement agreement are as follows:

- Identifying of the client, and general issues at hand, i.e. the purpose of the engagement. The context is important for all parties to understand since a forensic report is prepared for a specific purpose and intended audience and generally cannot be used for other purposes;
- Identifying the parties to the engagement, including those who might be in an opposing or adverse position;
- The scope of work of the engagement, allowing for the inherent uncertainties of the engagement. This might include documents to be reviewed and procedures to be undertaken;
- The anticipated deliverables and how those deliverables are intended for use, for instance submission to law enforcement agencies, expert witness purposes, or internal purposes only; and
- The anticipated fees for the engagement, or fees for the first phase of the engagement.

Other matters, not necessarily included in the engagement agreement, might include any scope limitations, the timing of completion of the deliverables and the dates of filing of deliverables, examinations for discovery, trial date and other timings.

Where a forensic and litigation support team is engaged to undertake an investigation or provide expert witness evidence, all aspects of the team's activities must be unbiased, and the team has a responsibility to not advocate for any party. Where expert witness evidence is anticipated / required, a forensic and litigation support team has a duty to the court irrespective of who is responsible for paying the team's fees.

The Engagement Process

While recognizing that each situation is unique, the following represents phases of a typical forensic and litigation support engagement. The extent of analysis, availability of documentation and the timing of deliverables can impact the engagement process and the extent and / or timing of the various phases.



Planning and information acquisition

- Initial meetings with client and client's professional advisors to understand the matter at hand;
- Identify documentation and other sources of information;
- Obtain understanding of relevant systems and processes;
- Develop work plan for the engagement and agree on reporting format and frequency of reporting;
- The purpose of this phase is to review the information presented to evaluate the situation and discuss expectations and possible outcomes.



Analysis / Investigation

- Initiate lines of investigations and / or analysis;
- Undertake interviews and gather documentation relevant to the investigation and / or analysis;
- Confirm approach to analysis and specific techniques and consider alternative theories;
- Undertake analysis and document observations and findings;
- Presentation and discussion of preliminary findings.



Verification of findings and reporting

- Develop draft report for review, discussion and validation with client and / or professional advisors. Depending on the nature of the agreement, this might include investigation findings, quantification of damages or recommendation to improve anti-fraud controls;
- Develop and present final report;
- As applicable, assist with queries on report from third parties such as insurers or law enforcement;
- As applicable, prepare and give expert testimony.

The engagement process is designed to recognize that, although a review might start with one concern, others might be raised as the integrated forensics and litigation support services team examines the evidence. For example, MNP was asked to look over several years of business expenses as part of a dispute. During the review, one of our team members noticed a discrepancy among one of the employee's payments; rather than being paid 26 times during a specific period like the other employees, they were paid 30 times. This led to a separate line of investigation.



Deliverables

Our deliverables depend on what is right for the situation and each situation is unique.

The phased approach described above enables us to deliver timely progress updates that empower the client to decide whether to proceed.

Should the decision be to proceed, MNP would, as necessary, provide:

- Clear, comprehensive reports together with detailed supporting and organised documents
- Expert testimony

The contents of a report commonly include the following and where required, are consistent with the requirements of the Standard Practices for Investigative and Forensic Accounting Engagements:¹

These standards require the report to include a clear statement of the engagement objectives, the information relied upon and any limitations thereto, appropriate detail explaining the analysis and conclusions reached, the purpose to which the report can be used and any related limitations and a statement confirming independence.

¹The Standard Practices for Investigative and Forensic Accounting Engagements are discussed below.



Professional Standards and Regulatory Requirements

This section considers professional standards and regulatory requirements to which a forensic and litigation support team might be subject.

CPA Rules of Professional Conduct

As members of a forensic and litigation support team are commonly chartered professional accountants (CPA), a forensic and litigation support engagement will likely be subject to the rules set out in the CPA Rules of Professional Conduct. Many of the rules are relevant to forensic and litigation support engagements, however two specific rules relating to independence and conflict of interest can impact whether a forensic and litigation support team is able to accept an engagement.

Generally, where a party to an action is a current or former client of the organization to which the forensic and litigation support team belong, there are restrictions as to the type of work that may be performed.

CPA Canada and AICPA Forensic Standards

CPA Canada and the American Institute of CPAs (AICPA) have set practice standards that should be met by all CPAs in Canada conducting a forensic assignment. These standards are in addition to those set out in the rules of professional conduct and any other regulatory and legal requirements that may be applicable. These standards are applicable to engagements involving a CPA that:

- Require the application of professional accounting skills, investigative skills and an investigative mindset; and

Involve disputes or anticipated disputes, or where there are risks, concerns or allegations of fraud or other illegal or unethical conduct.

Where an engagement is anticipated that involves a CPA in Canada, the CPA should confirm the applicability of Forensic standards and the requirements associated with them.

Rules of Court

Where a forensic and litigation support team is engaged to act as an independent expert in a civil litigation, the engagement is subject to the rules of court in the relevant jurisdiction.

Each province and territory has their own set of rules pertaining to items such as the appointment of experts and the contents of expert reports. There are some variances in the rules, for example, the Province of British Columbia and the Province of Ontario require an expert append to their report a certification acknowledging their duty to the court; other provinces only require acknowledgment of their obligations to the court.

What is consistent across all jurisdictions in Canada is that the forensic and litigation support team ultimately has a duty to assist the court and remain independent.



MNP Forensic and Litigation Support Services

Retaining forensic and litigation support services involves a number of key decisions. We hope this publication provides useful guidance and will contribute to efficient engagements.

MNP's Forensic and Litigation Support team has extensive experience working with clients in a wide range of matters across diverse industries. Please contact our specialists at MNP.ca to discuss your specific needs and how we can assist you, your clients or your business.

