



NATIONAL MOBILITY MODEL BY-LAW/RULES

Inter-jurisdictional practice

Definitions

1 In [this Part/these (mobility) Rules/By-Laws], unless the context indicates otherwise,

“**day**” means any calendar day or part of a calendar day in which a lawyer provides legal services;

“**discipline**” includes a finding by a governing body of any of the following:

- (a) professional misconduct;
- (b) incompetence;
- (c) conduct unbecoming a lawyer;
- (d) lack of physical or mental capacity to engage in the practice of law;
- (e) any other breach of a lawyer’s professional responsibilities;

“**disciplinary record**” includes any of the following, unless reversed on appeal or review:

- (a) any action taken by a governing body as a result of discipline;
- (b) disbarment;
- (c) a lawyer’s resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings;

- (d) restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter;
- (e) any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing.

“entitled to practise law” means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction;

“Executive Director” includes a person designated by the Executive Director to perform any of the duties assigned to the Executive Director in these Rules;

“governing body” means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau du Québec;

“home governing body” means any or all of the governing bodies of the legal profession in Canada of which a lawyer is a member, and **“home jurisdiction”** has a corresponding meaning;

“lawyer” means a member of a governing body;

“liability insurance” means compulsory professional liability errors and omissions insurance required by a governing body;

“National Mobility Agreement” means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

“National Registry” means the National Registry of Practising Lawyers established under the National Mobility Agreement;

“provide legal services” means to engage in the practice of law

- (a) physically in **[this jurisdiction]**, except with respect to the law of a home jurisdiction, or
- (b) with respect to the law of **[this jurisdiction]** physically in any jurisdiction,

and includes to provide legal services respecting federal jurisdiction in **[this jurisdiction]**;

“reciprocating governing body” means a governing body that has

- (a) signed the National Mobility Agreement, and
- (b) adopted regulatory provisions giving effect to the requirements of the National Mobility Agreement;

“resident” has the meaning respecting a province or territory that it has with respect to Canada in the *Income Tax Act* (Canada);

“visiting lawyer” means a lawyer who is entitled to practise law in a Canadian jurisdiction other than **[this jurisdiction]**.

Application and interpretation

2 (1) [This Part/These (mobility) Rules/By-Laws]

- (a) **[is/are]** intended to implement the provisions of the National Mobility Agreement, and
 - (b) **[applies/apply]** to a visiting lawyer, provided that the visiting lawyer is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member.
- (2) Unless it is inconsistent with the provisions of **[this Part/these (mobility) Rules/By-Laws]**, **[the existing Rules/By-Laws made pursuant to the Inter-jurisdictional Practice Protocol]** apply to temporary mobility under **[this Part/these (mobility) Rules/By-Laws]**.
- (3) Notwithstanding **[this Part/these (mobility) Rules/By-Laws]**, a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body
- (a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
 - (b) does not establish an economic nexus with **[this jurisdiction]** under Rule 8, provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

Temporary Mobility under National Mobility Agreement

- 3 (1)** A visiting lawyer who qualifies under subrule (3) may provide legal services without a permit for a maximum of 100 days in any calendar year.

- (2) On application of a visiting lawyer who otherwise qualifies under subrule (3), the Executive Director may allow the visiting lawyer to provide legal services without a permit beyond the time limit set in subrule (1).
- (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under subrule (1) or (2), a visiting lawyer must at all times:
 - (a) be entitled to practise law in a home jurisdiction;
 - (b) carry liability insurance that
 - (i) is reasonably comparable in coverage and limits to that required under Rule **[existing Rule on compulsory liability insurance]**, and
 - (ii) extends to the lawyer's temporary practice in **[this jurisdiction]**;
 - (c) have defalcation compensation coverage from a governing body that extends to the lawyer's practice in **[this jurisdiction]**;
 - (d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity;
 - (e) not be the subject of criminal or disciplinary proceedings in any jurisdiction;
 - (f) have no disciplinary record in any jurisdiction; and
 - (g) not establish an economic nexus with **[this jurisdiction]**, contrary to Rule 8.
- (4) The requirement in subrule (3)(b) does not apply to a visiting lawyer who is exempt from compulsory liability insurance under **[existing exemption rule]** with respect to legal services to be provided in **[this jurisdiction]**.

Responsibilities of visiting lawyer

- 4** (1) The Act, **[these (all) Rules/By-Laws]** and the *Professional Conduct Handbook* apply to and bind a visiting lawyer providing legal services.

- (2) It is the responsibility of a visiting lawyer providing legal services to
 - (a) record and verify the number of days in which he or she provides legal services, and
 - (b) prove that he or she has complied with these Rules.

Federal jurisdiction

- 5 For the purposes of **[this Part/these (mobility) Rules/By-Laws]**, a visiting lawyer is not providing legal services when appearing before any of the following tribunals, preparing for such an appearance and otherwise furthering the matter giving rise to the appearance:
 - (i) the Supreme Court of Canada;
 - (ii) the Federal Court of Canada;
 - (iii) the Tax Court of Canada;
 - (iv) a federal administrative tribunal;
 - (v) service tribunals as defined in the National Defence Act;
 - (vi) the Court Martial Appeal Court of Canada.

Trust funds

- 6 A visiting lawyer must not maintain a trust account in **[this jurisdiction]** and must
 - (a) promptly remit funds received in trust to the visiting lawyer's trust account in the home jurisdiction, or
 - (b) ensure that trust funds received are handled
 - (i) by a member of the Society entitled to practise law in **[this jurisdiction]** in a trust account controlled by that member of the Society, and
 - (ii) in accordance with the Act and these Rules.

Inter-jurisdictional practice permit under National Mobility Agreement

- 7 (1) A visiting lawyer who is not allowed to provide legal services without a permit under Rule 3 or is disqualified under Rule 8 may apply for a permit under **[applicable existing rules]**.
- (2) On application under this Rule, the Executive Director may issue a permit, subject to any conditions and restrictions that the Executive Director considers appropriate if, in the discretion of

the Executive Director, it is consistent with the public interest to do so.

- (3) A permit issued or renewed under this Rule
 - (a) subject to paragraph (c), is effective until one year from the date it was issued,
 - (b) allows a visiting lawyer to provide legal services for not more than 100 days in that year, and
 - (c) ceases to be valid if the holder of the permit
 - (i) ceases to be entitled to practise law in a home jurisdiction,
 - (ii) fails to maintain professional liability insurance as required under Rule 3(3)(b), or
 - (iii) is suspended or disbarred in any jurisdiction.

Disqualifications

- 8 (1) A visiting lawyer who has established an economic nexus with **[this jurisdiction]** is not permitted to provide legal services under **[this Part/these (mobility) Rules/By-Laws]**.
- (2) For the purposes of this **[Rule/By-Law]**, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in **[this jurisdiction]**:
 - (a) providing legal services beyond 100 days, or longer period allowed under Rule 3(2);
 - (b) opening an office from which legal services are offered or provided to the public;
 - (c) becoming resident;
 - (d) opening or operating a trust account, or accepting trust funds, except as permitted under Rule 6
 - (e) holding oneself out or allowing oneself to be held out as willing or qualified to practise law in **[this jurisdiction]**, except as a visiting lawyer.
- (3) A visiting lawyer who provides legal services in or from an office affiliated with the lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with **[this jurisdiction]**.

- (4) A visiting lawyer who becomes disqualified under this Rule must cease providing legal services forthwith, but may apply under Rule 11 for call and admission or under **[existing Rule on interjurisdictional practice permit]** for an interjurisdictional practice permit.
- (5) On application by a visiting lawyer, the Executive Director may allow the visiting lawyer to continue to provide legal services pending consideration of an application under Rule 11 or **[existing Rule on interjurisdictional practice permit]**.

National Registry of Practising Lawyers

- 9 (1) The Executive Director must provide to the National Registry the current and accurate information about practising lawyers required under the National Mobility Agreement.
- (2) No one may use or disclose information obtained from the National Registry except for a purpose related to enforcement of the Act and **[these (all) Rules/By-Laws]**.

Enforcement

- 10 (1) The Executive Director may require a visiting lawyer to
 - (a) account for and verify the number of days spent providing legal services, and
 - (b) verify compliance with any Rules specified by the Executive Director.
- (2) If a visiting lawyer fails or refuses to comply with a requirement under subrule (1) within 20 calendar days, or such longer time that the Executive Director may permit in writing,
 - (a) the visiting lawyer is prohibited from providing legal services without a permit,
 - (b) any permit issued to the visiting lawyer under **[the applicable Rule/By-Law]** is rescinded, and
 - (c) the Executive Director must advise the visiting lawyer's home governing body of the visiting lawyer's failure to comply and the consequences.
- (3) A visiting lawyer who is affected by subrule (2) may apply to the **[Call and Admission/Credentials]** Committee for restoration

of any or all rights lost under that subrule and the Committee may, in its discretion, grant the application, subject to any conditions it considers to be in the public interest.

- (4) A lawyer, articled student or applicant who is charged with an offence under a federal statute must, as soon as practicable, give written notice to the Executive Director of
 - (a) the particulars of the charge, and
 - (b) the disposition of the charge and any agreement arising out of the charge.

Transfer under National Mobility Agreement

- 11** (1) This Rule applies to an applicant for transfer from another Canadian jurisdiction, provided that the applicant is entitled to practise law in the jurisdiction of a reciprocating governing body of which the applicant is a member.
- (2) An applicant under this Rule must fulfill all of the requirements in **[existing rule on transfer and any other qualifications that ordinarily apply for lawyers to be entitled to practise law in this jurisdiction]** for call and admission on transfer from another Canadian jurisdiction, except that he or she need not pass any transfer examination.
- (3) To qualify for call and admission, an applicant under this Rule must certify in a prescribed form that he or she has reviewed and understands all of the materials reasonably required by the **[Executive Director/Call and Admission Committee]**.
- (4) A lawyer called and admitted under this Rule has no greater rights as a member of the Society than
 - (a) the lawyer has as a member of the governing body of his or her home jurisdiction, or
 - (b) any other member of the Society in similar circumstances.

Liability insurance

- 12** (1) This Rule applies to a member of the Society who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the lawyer is a member.

- (2) A lawyer may apply to the Executive Director for exemption from the requirement for professional liability insurance in **[existing Rule on compulsory insurance]**, if, in another Canadian jurisdiction in which the governing body allows a similar exemption for members of the Society, the lawyer
 - (a) is resident, and
 - (b) maintains the full mandatory professional liability insurance coverage required in the other jurisdiction that is reasonably comparable in coverage and limits to that required of lawyers in **[this jurisdiction]** and extends to the lawyer's practice in **[this jurisdiction]**.

Discipline

- 13** (1) If there is an allegation of misconduct against a member of the Society while practising temporarily in another Canadian jurisdiction under provisions of a governing body equivalent to Rule 3, the Society will
 - (a) consult with the governing body concerned respecting the manner in which disciplinary proceedings will be conducted, and
 - (b) subject to subrule (2), assume responsibility for the conduct of the disciplinary proceedings.
- (2) The Society may agree to allow the other governing body concerned to assume responsibility for the conduct of disciplinary proceedings under subrule (1), including expenses of the proceeding.
- (3) In deciding whether to agree under subrule (2), the primary considerations will be the public interest, convenience and cost.
- (4) To the extent that is reasonable in the circumstances, the Executive Director must do the following on the request of a governing body that is investigating the conduct of a member of the Society or a visiting lawyer who has provided legal services:
 - (a) provide all relevant information and documentation respecting the lawyer or visiting lawyer as is reasonable in the circumstances;
 - (b) cooperate fully in the investigation and any citation and hearing.
- (5) Subrule (4) applies when the Society agrees with a governing body under subrule (2).

(6) A duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct is proof of the lawyer's guilt.