National Mobility Agreement

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Federation of Law Societies of Canada

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The purpose of this agreement is to facilitate temporary and permanent mobility of lawyers between Canadian jurisdictions.

While the signatories participate in this agreement voluntarily, they intend that only lawyers who are members of signatories that have implemented reciprocal provisions in their jurisdictions will be able to take advantage of the provisions of this agreement.

The signatories recognize that

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,

- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil law jurisdictions, and

- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures, while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Most of the signatories subscribed to the Interjurisdictional Practice Protocol of 1994, in which they agreed to certain measures to facilitate the temporary and permanent inter-jurisdictional practice of law and the enforcement of appropriate standards on lawyers practising law in host jurisdictions.

In August 2001, the Federation of Law Societies established a National Mobility Task Force to examine full mobility rights and conditions for lawyers to practise law in all Canadian jurisdictions.

In August, 2002, the Federation of Law Societies accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this agreement, unless the context indicates otherwise:

"Barreau" means le Barreau du Québec;

"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;
(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;

"governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction, and the Barreau;

"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;

"host governing body" means a governing body of the legal profession in Canada in whose jurisdiction a lawyer practises law without being a member, and **"host jurisdiction"** has a corresponding meaning;

"Inter-Jurisdictional Practice Protocol" means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

"lawyer" means a member of a signatory governing body;

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

"mobility permit" means a permit issued by a host governing body on application to a lawyer allowing the lawyer to provide legal services in the host jurisdiction on a temporary basis;

"practice of law" has the meaning with respect to each jurisdiction that applies in that jurisdiction;

"providing legal services" means engaging in the practice of law physically in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

"Registry" means the National Registry of Practising Lawyers established under clause **17** of this agreement;

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

General

2. The signatory governing bodies will

(a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this agreement;

(b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this agreement;

(c) comply with the spirit and intent of this agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and

(d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.

3. Signatory governing bodies will subscribe to this agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this agreement.

4. A signatory governing body will not, by reason of this agreement alone,

(a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or

(b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

5. Amendments made under clause 2(b) will take effect immediately on adoption with respect to members of signatory governing bodies that have adopted reciprocal provisions.

Temporary Mobility Among Common law Jurisdictions

6. Clauses **7** to **31** apply to temporary mobility of lawyers of common law jurisdictions in other common law jurisdictions.

Mobility without permit

7. A host governing body will allow a lawyer from another jurisdiction to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, without a mobility permit or notice to the host governing body, for a total of not more than 100 days in a calendar year, provided the lawyer:

(a) meets the criteria in clause **10**;.and

(b) has not established an economic nexus with the host jurisdiction as described in clause **16**.

8. The host governing body will have the discretion to extend the time limit for temporary mobility under clause **7** with respect to an individual lawyer.

9. It will be the responsibility of a lawyer to

(a) record and verify the number of days in which he or she provides legal services in a host jurisdiction(s) or with respect to each jurisdiction; and

(b) prove that he or she has complied with provisions implementing clause **7**.

10. To qualify to provide legal services on a temporary basis without a mobility permit or notice to the host governing body under clause **7**, a lawyer will be required to do each of the following 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 amount to that required of lawyers of the host jurisdiction; and

(ii) extends to the lawyer's practice in the host jurisdiction;

(c) have defalcation compensation coverage from a Canadian governing body that extends to the lawyer's practice in the host jurisdiction;

(d) not be subject to conditions of or restrictions on the lawyer's practice or membership in the governing body in any jurisdiction;

(e) not be the subject of criminal or disciplinary proceedings in any jurisdiction; and

(f) have no disciplinary record in any jurisdiction.

11. For the purposes of clause **7**:

(a) a lawyer practising law of federal jurisdiction in a host jurisdiction will be providing legal services in the host jurisdiction;

(b) as an exception to subclause (a), when appearing before the following tribunals in a host jurisdiction a lawyer will not be providing legal services in a host jurisdiction:

(i) the Supreme Court of Canada;

(ii) the Federal Court of Canada;

(iii) the Tax Court of Canada;

(iv) a federal administrative tribunal.

12. A host jurisdiction will allow a lawyer to accept funds in trust on deposit, provided the funds are deposited to a trust account:

(a) in the lawyer's home jurisdiction; or

(b) operated in the host jurisdiction by a member of the host governing body.

Mobility permit required

13. If a lawyer does not meet the criteria in clause **10** to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction on a temporary basis, a host governing body will issue a mobility permit to the lawyer:

(a) on application;

(b) if, in the complete discreton of the host governing body, it is consistent with the public interest to do so;

(c) for a total of not more than 100 days in a calendar year; and

(d) subject to any conditions and restrictions that the host governing body considers appropriate.

Temporary mobility not allowed

14. A host governing body will not allow a lawyer who has established an economic nexus with the host jurisdiction to provide legal services on a temporary basis under clause **7**, but will require the lawyer to do one of the following:

(a) cease providing legal services in the host jurisdiction forthwith;

(b) apply for and obtain membership in the host governing body; or

(c) apply for and obtain a mobility permit under clause **13**.

15. On application, the host governing body will have the discretion to allow a lawyer to continue to provide legal services in the host jurisdiction or with respect to the law of the host jurisdiction pending consideration of an application under clause **14(b) or (c).**

16. In clause **14**, an economic nexus is established by actions inconsistent with temporary mobility to the host jurisdiction, including but not limited to doing any of the following in the host jurisdiction:

(a) providing legal services beyond 100 days, or longer period allowed under clause **8**;

(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 clause **12**.

National Registry of Practising Lawyers

17. The signatory governing bodies will establish, maintain and operate a National Registry of Practising Lawyers containing the names of lawyers from each signatory governing body qualified under clause **10** to practise law interjurisdictionally without a mobility permit or notice to the host governing body.

18. Each signatory governing body will take all reasonable steps to ensure that all relevant information respecting its members is supplied to the Registry and is kept current and accurate.

Liability Insurance and Defalcation Compensation Funds

19. Each signatory governing body will ensure that the ongoing liability insurance in its jurisdiction

(a) extends to its members for the provision of legal services on a temporary basis in or with respect to the law of host signatory jurisdictions; and

(b) provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

20. In the event that a claim arises from a lawyer providing legal services on a temporary basis, and the closest and most real connection to the claim is with a host jurisdiction, the home governing body will provide at least the same scope of coverage as the liability insurance in the host jurisdiction. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

21. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their liability insurance policies that affect the limits of liability or scope of coverage.

22. Signatory governing bodies will apply or continue to apply the provisions of the Interjurisdictional Practice Protocol respecting defalcation compensation, specifically clause 10 of the Protocol and Appendix 6 to the Protocol.

23. Signatory governing bodies will notify one another in writing, as soon as practicable, of any changes to their defalcation compensation fund programs that affect the limits of compensation available or the criteria for payment.

Enforcement

24. A host governing body that has reasonable grounds to believe that a member of another governing body has provided legal services in the host jurisdiction will be entitled to require that lawyer to:

(a) account for and verify the number of days spent providing legal services in the host jurisdiction; and

(b) verify that he or she has not done anything inconsistent with the provision of legal services on a temporary basis.

25. If a lawyer fails or refuses to comply with the provisions of clause **24**, a host governing body will be entitled to:

(a) prohibit the lawyer from providing legal services in the jurisdiction for any period of time; or

(b) require the lawyer to apply for membership in the host jurisdiction before providing further legal services in the jurisdiction.

26. When providing legal services in a host jurisdiction or with respect to the law of a host jurisdiction, all lawyers will be required to comply with the applicable legislation, regulations, rules and standards of professional conduct of the host jurisdiction.

27. In the event of alleged misconduct arising out of a lawyer providing legal services in a host jurisdiction, the lawyer's home governing body will:

(a) assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host and home governing bodies agree to the contrary; and

(b) consult with the host governing body respecting the manner in which disciplinary proceedings will be taken against the lawyer.

28. If a signatory governing body investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each governing body in whose jurisdiction the lawyer has provided legal services on a temporary basis will provide all relevant information and documentation respecting the lawyer as is reasonable in the circumstances.

29. In determining the location of a hearing under clause **27**, the primary considerations will be the public interest, convenience and cost.

30. A governing body that initiates disciplinary proceedings against a lawyer under clause **27** will assume full responsibility for conduct of the proceedings, including costs, subject to a contrary agreement between governing bodies.

31. In any proceeding of a signatory governing body, a duly certified copy of a disciplinary decision of another governing body concerning a lawyer found guilty of misconduct will be proof of that lawyer's guilt.

Permanent Mobility Among Common Law Jurisdictions

32. A signatory governing body will require no further qualifications for a member of another governing body to be eligible for membership than the following:

(a) entitlement to practise law in the lawyer's home jurisdiction;

(b) good character and fitness to be a lawyer, on the standard ordinarily applied to applicants for membership; and

(c) any other qualifications that ordinarily apply for lawyers to be entitled to practise law in its jurisdiction.

33. Before admitting as a member a lawyer qualified under clause **32**, a governing body will not require the lawyer to pass a transfer examination or other examination, but may require the lawyer to do all of the following:

(a) provide certificates of standing from all Canadian and foreign governing bodies of which the lawyer is or has been a member;

(b) disclose criminal and disciplinary records in any jurisdiction;

(c) consent to access by the governing body to the lawyer's regulatory files of all governing bodies of which the lawyer is a member, whether in Canada or elsewhere; and

(d) certify that he or she has reviewed all of the materials reasonably required by the governing body.

Public Information

34. A governing body will make available to the public information obtained under clause **33** in the same manner as similar records originating in its jurisdiction.

Liability Insurance

35. On application, a signatory governing body will exempt a lawyer from liability insurance requirements if the lawyer does the following in another signatory jurisdiction :

(a) is resident;

(b) is a member of the governing body; and

(c) maintains ongoing liability insurance required in that jurisdiction that provides occurrence or claim limits of $1,000,000 and $2,000,000 annual per member aggregate.

36. In the event that a claim arises from a lawyer providing legal services and the closest and most real connection to the claim is with a jurisdiction in which the lawyer has claimed an exemption under clause **35**, the insurance program of the governing body in the jurisdiction where the lawyer is insured will provide at least the same scope of coverage as the liability insurance in the jurisdiction in which the lawyer is exempt. For clarity, all claims and potential claims reported under the policy will remain subject to the policy's occurrence or claim limit of $1,000,000 and $2,000,000 annual per member aggregate.

Temporary Mobility between Quebec and Common Law Jurisdictions

37. The Barreau will permit lawyers entitled to practise law in a home jurisdiction, on application under regulations that apply to the Barreau, to provide legal services in Quebec or with respect to the law of Quebec on a specific case or for a specific client for a period of up to one year, which may be extended on application to the Barreau.

38. A signatory governing body, other than the Barreau, will permit members of the Barreau to provide legal services in its jurisdiction or with respect to the law of its jurisdiction on one of the following bases:

(a) as provided in clauses **7** to **31**; or

(b) as permitted by the Barreau in respect of the members of the signatory governing body.

Permanent Mobility Between Quebec and Common Law Jurisdictions

39. While the signatory governing bodies recognize that the Barreau must comply with regulations that apply to all professions in Quebec, the Barreau agrees to consult with the other signatory governing bodies before changing regulations on the mobility of Canadian lawyers to Quebec.

40. A signatory governing body, other than the Barreau, will admit members of the Barreau as members on one of the following bases:

(a) as provided in clauses **32** to **36**; or

(b) as permitted by the Barreau in respect of the members of the signatory governing body.

Inter-Jurisdictional Practice Protocol

41. The signatory governing bodies agree that the Inter-Jurisdictional Practice Protocol will continue in effect,

(a) with respect to governing bodies that are signatories of that Protocol, but not this agreement;

(b) to the extent that it is not replaced by or inconsistent with legislation, regulation and programs adopted and implemented to give effect to this agreement.

42. Signatory governing bodies will apply or continue to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of defalcation compensation and arbitration of disputes, specifically, clause 10 of the Protocol and Appendices 5 and 6 to the Protocol.

Transition Provisions

43. This agreement is a multi-lateral agreement, effective respecting the governing bodies that are signatories, and it does not require unanimous agreement of Canadian governing bodies.

44. Provisions governing temporary and permanent mobility in effect at the time that a governing body becomes a signatory to this agreement will continue in effect:

(a) with respect to all Canadian lawyers until this agreement is implemented; and

(b) with respect to members of Canadian law societies that are not signatories to this agreement.

Withdrawal

45. A signatory may cease to be bound by this agreement by giving each other signatory written notice of at least one clear calendar year.

46. A signatory that gives notice under clause **45** will:

(a) immediately notify its members in writing of the effective date of withdrawal; and

(b) require that its members who provide legal services in the jurisdiction of another signatory governing body ascertain from that governing body its requirements for inter-provincial mobility before providing legal services in that jurisdiction after the effective date of withdrawal.

SIGNED BY

The Law Society of **Alberta** _____
President

The Law Society of **British Columbia** _____
President

The Law Society of **Manitoba** _____
President

Law Society of **New Brunswick** _____
President

Law Society of **Newfoundland and Labrador** _____
President

Nova Scotia Barristers' Society _____
President

Law Society of the **Northwest Territories** _____
President

The Law Society of **Nunavut** _____
President

Law Society of **Upper Canada** _____
Treasurer

Law Society of **Prince Edward Island** _____
President

Barreau du **Québec** _____
Bâtonnier

Law Society of **Saskatchewan** _____
President

The Law Society of **Yukon** _____
President

DATED _____