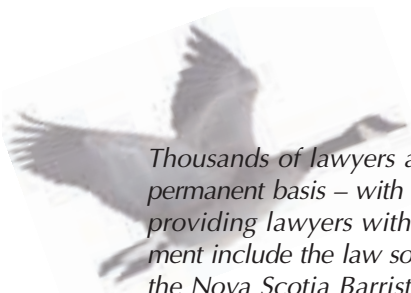




How the **new mobility** **agreement**

affects you and your
insurance coverage



Thousands of lawyers across Canada can now practise in another Canadian jurisdiction on either a temporary or permanent basis – with very few impediments. On July 1, 2003, the National Mobility Agreement came into effect, providing lawyers with significantly more mobility than they had previously enjoyed. Signatories to the new agreement include the law societies of British Columbia, Alberta, Saskatchewan, Manitoba, Newfoundland and Labrador, the Nova Scotia Barristers' Society and the Law Society of Upper Canada.* The Barreau du Québec also signed the agreement, although as a civil law jurisdiction, different criteria will apply.

An important component of the Agreement is the co-ordination of professional liability insurance coverage for lawyers practising in each others' jurisdictions. To ensure the Ontario program is consistent with the practice criteria outlined in the mobility protocol, LAWPRO recently received Convocation's approval for a change to its exemption criterion (see next page).

The following Q&A summarizes typical situations which apply to lawyers from Ontario who practise elsewhere, and lawyers from other signatory jurisdictions who practise in Ontario on a temporary basis. More detailed information on the insurance coverage implications of the new mobility protocol is available on the LAWPRO Web site at www.lawpro.ca.

I am a member of the Ontario Bar and am representing a client in a proceeding in British Columbia that will take several months to resolve.

Can I practise in B.C., now that the Mobility Agreement is in effect? Do I have to notify anyone of my intention to do so?

Will I have insurance coverage, and if so, which jurisdiction's coverage is in effect (i.e. do I have B.C. coverage for those services provided in B.C. or Ontario coverage?)

The Mobility Agreement enables lawyers to practise in another signatory jurisdiction on a temporary basis (i.e. up to 100 days total in a calendar year without permit), provided that they meet all requirements of the Agreement pertaining to their status with the law society of their home jurisdiction (i.e. they are entitled to practise law without restriction in a signatory common law jurisdiction, have liability insurance and defalcation coverage, are not subject to criminal or disciplinary proceedings and have no discipline record).

So provided that the B.C. proceeding requires not more than 100 days of your participation, you will be able to continue to act as legal counsel to your client on this matter in British Columbia. You do not have to notify anyone of your intention to do so, and you will have insurance coverage for the services you provide in British Columbia. Because your home jurisdiction is Ontario, you will have coverage under your LAWPRO insurance policy, which has been amended to reflect this expanded ability of lawyers to practise in other jurisdictions.

If a claim arises out of these services you provided in British Columbia, you would report the claim to LAWPRO. To ensure a client is not prejudiced as a result of the differing coverages offered by various jurisdictions, the signatories to the Mobility Agreement have determined that the law society of the home jurisdiction will provide coverage of at least the same scope as the liability insurance provided by the host jurisdiction for a given claim, where the claim most concerns the host jurisdiction. The claim

would remain subject to the Ontario policy's limits of \$1 million per claim/\$2 million in the aggregate.

If I move my law practice to Nova Scotia permanently, but wish to stay a member of the Ontario Bar, do I have to maintain my insurance coverage in both jurisdictions and who do I have to notify? If a claim arises out of services I provided in the past in Ontario, which plan covers me?

One of the goals of the Mobility Agreement is to make it easier for lawyers to become a member of a law society in another jurisdiction without having to pass transfer exams. If you have been called to the Bar in one signatory jurisdiction but wish to become a member of the Bar in another signatory jurisdiction, you must meet some basic criteria before being admitted to the Bar in another jurisdiction.

For example, you must be a lawyer in good standing in a host jurisdiction (in this case, Ontario). You may also be required to: disclose criminal and disciplinary records in any jurisdiction; consent to give the law society to which you are applying for membership access to your regulatory files in any jurisdiction in which you are a member; and complete some supplementary readings, before being allowed to join the Bar in that jurisdiction.

Recognizing that it is not reasonable for lawyers to maintain duplicate insurance coverage in several jurisdictions, the insurance requirements have been similarly simplified to support this mobility of lawyers. For example, the Law Society has expanded its exemption criteria to allow you – the member of the Ontario Bar who plans to take up residency in Nova Scotia and practise there – to exempt yourself from the Ontario insurance coverage. The principal criterion here is where you are resident, the assumption being that you will practise and maintain insurance coverage in the jurisdiction in which you are resident.

* The Agreement only comes into effect in each signatory jurisdiction once that jurisdiction has passed the necessary rule changes. Lawyers are advised to contact individual law societies for details.

In other words, provided you meet the following conditions, you will be able to exempt yourself from paying the Ontario insurance premium but will be able to maintain your Law Society of Upper Canada membership:

- You are resident in Nova Scotia;
- You are a member of the Bar in Nova Scotia;
- You maintain the mandatory professional liability insurance coverage in Nova Scotia.

If a claim arises out of your Nova Scotia practice in this coming year, it is your Nova Scotia policy that would respond.

The Ontario program, however, will continue to provide you with protection for claims that subsequently arise out of your earlier practice in Ontario, appreciating that you had practised in Ontario on a permanent basis at the time and maintained the program coverage there. You would have coverage of \$1 million per claim/\$2 million in the aggregate if practising, and \$250,000 per claim and in the aggregate if not in practice.

A Calgary-based law firm has a long-standing client with some interests in Ontario. Can the firm's Calgary lawyers now provide services to that client in Ontario? If a claim arises out of services provided by that Calgary lawyer in Ontario, which jurisdiction's liability policy is in effect? Is that lawyer provided the same level of coverage – i.e. \$1 million per claims/\$2 million in the aggregate, as we are in Ontario?

Provided that the Calgary lawyer meets all of the requirements of the National Mobility Agreement, he or she can, on a temporary basis, practise in Ontario and provide services to his client and others. One condition is that the total number of days in which she or he practises in Ontario on a temporary basis cannot be more than 100 days in a calendar year (without any individual extension on the part of the host law society).

If there is a claim, the responding jurisdiction would be the home jurisdiction, in this case the Law Society of Alberta. The lawyer would have coverage that is at least the same scope of coverage as that offered in Ontario, with respect to the claim. If the Alberta program under which he or she is insured offers greater scope of coverage, that coverage would apply, subject to the claim limits of \$1 million per claim/\$2 million in the aggregate.

New exemption criteria

At its June Convocation, Benchers of the Law Society passed the following change to the criteria under which lawyers who are members of the Law Society of Upper Canada can apply to exempt themselves from paying the LAWPRO insurance premium.

The first provision preserves the traditional occasional practice exemption for lawyers who are resident in a Canadian jurisdiction other than Ontario, and engage in the practice of law in Ontario on an occasional basis.

The second provision speaks to the mobility of lawyers and specifically to the instance where a lawyer is called to the bar in more than one reciprocating jurisdiction in Canada.

"9. (1) The following are eligible to apply for exemption from payment of insurance premium levies:

2. Any member who, during the course of the year for which a levy is payable,
 - i. will be resident in a Canadian jurisdiction other than Ontario,
 - ii. will engage in the practice of law in Ontario on an occasional basis only, and
 - iii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of another Canadian jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

2.1 Any member who, during the course of the year for which a levy is payable,

- i. will be resident in a reciprocating jurisdiction, and
- ii. demonstrates proof of coverage for the member's practice in Ontario under the mandatory professional liability insurance program of the reciprocating

jurisdiction, such coverage to be reasonably comparable in coverage and limits to professional liability insurance that is required under the Society's insurance plan.

Interpretation: occasional practice of law

(2) For the purposes of paragraph 2 of subsection (1), in any year, a member engages in the practice of law on an occasional basis if, during that year, the member,

- (a) practises law in respect of not more than ten matters; and
- (b) practises law for not more than twenty days in total.

Interpretation: "reciprocating jurisdiction"

(2.1) In subsection (1), "reciprocating jurisdiction" means a Canadian jurisdiction other than Ontario,

- (a) which is a signatory to the agreement on the inter-provincial practice of law originally entered into in December 2002 by the Society, the Law Society of British Columbia, The Law Society of Alberta, the Law Society of Saskatchewan, The Law Society of Manitoba, The Barreau du Québec, the Nova Scotia Barristers' Society and the Law Society of Newfoundland;
- (b) in which a member is authorized to practise law; and
- (c) which would exempt the member from its mandatory professional liability insurance program if the member were resident in Ontario and demonstrated proof of coverage for the member's practice in the jurisdiction under the Society's insurance plan which was reasonably comparable in coverage and limits to the professional liability insurance that would otherwise be required of the member by the jurisdiction.

Interpretation: "resident"

(5) In subsection (1), "resident" has the same meaning given it for the purposes of the *Income Tax Act* (Canada)."