

## Frequently Asked Questions on Mobility

These FAQs are intended to provide you with an overview to the provisions respecting mobility. The questions and answers are intended as a guide only. Lawyers seeking to exercise temporary or permanent mobility in Nova Scotia should read the applicable regulation provisions. In the event of any discrepancy between these FAQs and the provisions of the regulations, the regulations apply.

Any inquiries should be directed to the Officer, Admissions or to [Officer of Admissions](#) at the Society.

### WHAT IS MEANT BY INTER-PROVINCIAL MOBILITY?

Inter-provincial mobility is the term used to describe the manner in which:

- a lawyer called to the Bar in one Canadian province or territory can provide legal services temporarily in or with respect to the law of another province or territory; and
- a lawyer called to the Bar in one province or territory may be called to the Bar of another province or territory.

In Nova Scotia, the regulations addressing temporary mobility are based upon Agreements negotiated among members of the Federation of Law Societies of Canada to which the Nova Scotia Barristers' Society is a signatory. These agreements are:

- the Inter-Jurisdictional Practice Protocol;
- the National Mobility Agreement; and
- the Territorial Mobility Agreement.

In Nova Scotia, the requirements respecting permanent mobility are based upon "transfer" rules that have been approved over the years and the provisions in the National Mobility Agreement ("the NMA") and Territorial Mobility Agreement ("the TMA") referred to above.

NOTE: Lawyers from provinces or territories outside of Nova Scotia who are interested in temporary or permanent mobility should familiarize

themselves with the applicable Regulations.

Lawyers from Nova Scotia who seek to exercise mobility elsewhere in the country should consult the law society in the jurisdiction in which they wish to exercise temporary or permanent mobility. The requirements to which they will be subject will depend upon whether the jurisdiction in question is a signatory to the NMA or the TMA and has implemented rules under those Agreements.

## **WHAT REGULATIONS GOVERN MOBILITY IN NOVA SCOTIA?**

The main mobility provisions are contained in Part 6 of the Regulations.

## **HOW DO I KNOW WHICH MOBILITY REGULATIONS APPLY TO ME?**

If you are a lawyer from another country, you must be called to the Bar in Nova Scotia before you will be eligible for mobility pursuant to Regulation 6.2 or 6.3 or 6.4.

If you are a lawyer from another province or territory of Canada, and wish to be admitted to the Nova Scotia Bar upon transfer, Regulation 6.2 applies.

The provisions of the NMA and TMA apply to lawyers who are entitled to practice in another province or territory that has signed the NMA or TMA and adopted regulatory provisions giving effect to the requirements.

TMA applicants will be considered a reciprocating jurisdiction under the NMA for Transfers but non-reciprocating jurisdictions under the NMA for temporary appearances (see below).

Regulation 6.3 applies if you qualify under the NMA and wish to practice in Nova Scotia on a temporary basis (see below).

Regulation 6.4 applies if you do not qualify under the NMA and wish to practice in Nova Scotia on a temporary basis (see below).

## **HOW CAN I EXERCISE TEMPORARY MOBILITY IN NOVA SCOTIA?**

Regulation 6.3 applies to you if you are entitled to practice law in another province of Canada, if you meet all the eligibility requirements and if the governing body in which you are entitled to practice law has signed the

NMA and has enacted rules to implement its provisions. In such instances, if you meet the requirements set out in the Regulation you may without permission of the Nova Scotia Barristers' Society practice law on a temporary basis up to 100 days each year.

If you are from a reciprocating jurisdiction under the NMA, but ineligible under the NMA, you must apply for a permit to practice law on a temporary basis in Nova Scotia in accordance with Regulation 6.3.4. If permission is granted, the Society may impose such terms and conditions as it considers appropriate.

If you are from a non-reciprocating jurisdiction under the NMA, or if you are a TMA applicant, and if you meet the requirements of Regulation 6.4.4, you may practice law on a temporary basis on not more than ten matters each year and that totals not more than 20 days in a year. If you do not meet the requirements of Regulation 6.4.4 or if your circumstances fall under sub Regulations 6.4.5(c), (e) and (f), you must apply for a permit.

You are urged to contact the Officer, Admissions, if you have any questions or if you are unsure of the applicable Regulation.

## **WHAT DOES "ENTITLED TO PRACTICE LAW" MEAN?**

Some of the provinces and territories will use the term "authorized to practice law". Nova Scotia uses "entitled to practice."

In both cases this means that as a prerequisite to being eligible to practice law temporarily in Nova Scotia or to transferring permanently to Nova Scotia (see below) within the NMA you must first meet the requirements imposed by your own law society for its members to be entitled or authorized to practice law.

Examples:

If you are required to have insurance in your home province in order to be considered entitled to practice, and you do not currently have it, you are not eligible to transfer under the NMA.

If you have non-practising status in your home jurisdiction and wish to transfer to the Nova Scotia Barristers' Society under the NMA, you must be re-instated to practising insured status in your home province before applying to Nova Scotia.

## **IF I AM ELIGIBLE FOR MOBILITY UNDER REGULATION 6.3 IS THERE ANY LIMITATION ON THIS ELIGIBILITY?**

You may practice law on a temporary basis as a visiting lawyer for not more than 100 days in a calendar year. "Day" is defined to include any part of day. The onus is on you to keep a record of the days on which you practice law on a temporary basis in or with respect to the law of Nova Scotia. The Society may require you to provide proof of compliance with the Regulation, including proof of the number of days on which you have practiced law on a temporary basis in Nova Scotia.

**Note that if you move to Nova Scotia from another province, you no longer qualify under the temporary practice provisions of the NMA. You have established an economic nexus under Regulation 6.3.2 and must be called to the Bar in Nova Scotia or apply for a special permit before you begin practising law in Nova Scotia.**

## **IS IT POSSIBLE TO EXTEND THE 100 DAYS?**

Yes, with the permission of the Society. You must apply for an extension before the end of the 100 days.

## **WHEN DO I BEGIN COUNTING THE 100 DAYS?**

You would begin counting on the first day you begin practising law on a temporary basis in Nova Scotia

## **WHAT CONSTITUTES THE PRACTICE OF LAW UNDER PART 6 OF THE REGULATIONS?**

You will be practising law in Nova Scotia if you conduct any of the activities set out in Section 16(1) of the *Legal Profession Act*.

You could be practising law in Nova Scotia whether or not you are physically in Nova Scotia. For example, if you are giving legal advice with respect to the laws of Nova Scotia on the telephone, by e-mail or through correspondence from a province outside of Nova Scotia you are considered to be practising law in Nova Scotia. You must therefore keep track of all of these activities.

It also means that you are practising law in Nova Scotia if you do so with respect to the laws of Canada applicable to Nova Scotia. So for example,

lawyers in the employ of the government of Canada who perform professional services as a lawyer or give legal advice with respect to or relying on the laws of Canada applicable to Nova Scotia will be subject to Part 6 of the Regulations.

Lawyers who practice law on a temporary basis for a single employer (corporate counsel) will also be considered to be practising law for the purposes of Regulation 6.3.

You will not be practising law in Nova Scotia for the purposes of the Regulations if you perform professional services or give advice solely on the law of another province.

In addition, you will not be required to include in your calculation of the 100 days any time spent practising law as a counsel in a proceeding in

- (a) the Supreme Court of Canada,
- (b) the Federal Court of Canada,
- (c) the Tax Court of Canada,
- (d) Federal Administrative Tribunals,
- (e) Service Tribunals under the *National Defence Act* or
- (f) the Court Martial Appeal Court of Canada.

Time spent preparing for the appearance or otherwise furthering the matter will also not be required to be counted.

Check the definition carefully to determine whether your activities come within its scope. If you come within the definition, you are subject to the Regulation.

## **WHAT DOES IT MEAN TO ESTABLISH AN ECONOMIC NEXUS WITHIN NOVA SCOTIA?**

An economic nexus with Nova Scotia is established if, while practising law on a temporary basis in Nova Scotia, you do something that is inconsistent with practising law only on a temporary basis.

You would establish an economic nexus with Nova Scotia if you practice law in Nova Scotia for more than the maximum number of days permitted Regulation 6.3.3, or if you:

- Open an office in Nova Scotia from which to practice law
- Open or operate a trust account at a financial institution located in Nova Scotia
- Receive money in trust for client, other than as set out below
- Hold yourself out as willing to accept new clients in Nova Scotia
- Become resident in Nova Scotia
- Act in any manner inconsistent with practising law in Nova Scotia only on a temporary basis.

### **WHAT HAPPENS IF I ESTABLISH AN ECONOMIC NEXUS WITH NOVA SCOTIA?**

You are no longer eligible to practice law on a temporary basis in Nova Scotia and must cease doing so immediately. You may, however, apply to become a member of the Nova Scotia Barristers' Society by way of transfer from another jurisdiction.

### **WHILE I AM PRACTISING LAW IN NOVA SCOTIA ON A TEMPORARY BASIS CAN I RECEIVE MONEY IN TRUST FOR A CLIENT?**

If you are permitted to practice law in Nova Scotia on a temporary basis, you may receive money in trust for a client provided that you pay the money into a trust account at a financial institution located in the province or territory in which you are authorized to practice law or you pay the money into a trust account that is kept in the name of and operated by a member of the Nova Scotia Barristers' Society in accordance with our Trust Account Regulations and the money is handled only by that member in accordance with the applicable rules.

### **ARE THERE RESTRICTIONS ON ADVERTISING WHEN I AM PRACTISING LAW ON A TEMPORARY BASIS?**

Yes. You must not hold yourself out as willing or qualified to practice law in Nova Scotia, except as a visiting lawyer. Any communications, including letterhead, business cards or marketing efforts, must conform to this

restriction. You can comply with this by clearly identifying the governing body(ies) in which you are authorized to practice law.

### **HOW WILL THIRD PARTIES KNOW I HAVE THE RIGHT TO PRACTICE LAW ON A TEMPORARY BASIS IN NOVA SCOTIA WITHOUT A PERMIT?**

A national database is in operation that allows law societies to determine whether a lawyer is eligible to practice law in Nova Scotia on a temporary basis without a permit. A third party wishing to make inquiries about a lawyer can contact the Nova Scotia Barristers' Society.

You should be aware that in Nova Scotia some court and correctional facilities may require lawyers to provide proof that they are members of the Nova Scotia Barristers' Society. It is unlikely they will accept as valid for their purposes proof that you are a member of another law society.

If you are concerned about being unable to access one of these facilities, you may wish to contact the Officer, Admissions at the Nova Scotia Barristers' Society to obtain a letter confirming that you are eligible to practice law in Nova Scotia on a temporary basis. There is no guarantee that the facilities in question will accept this authorization, since they are subject to their own rules that may not yet have contemplated mobility provisions.

### **WHILE I AM PRACTISING LAW IN NOVA SCOTIA ON A TEMPORARY BASIS, AM I SUBJECT TO THE LEGAL PROFESSION ACT?**

The Legal Profession Act, the Regulations and the Code of Professional Conduct apply to you with necessary modifications.

### **WHILE I AM PRACTISING LAW IN NOVA SCOTIA ON A TEMPORARY BASIS CAN I COMMISSION AFFIDAVITS?**

No. The Legal Profession Act provides that lawyers entitled to practice law in Nova Scotia are commissioners for taking affidavits by virtue of their office. A lawyer practising law on a temporary basis would not meet the necessary definition.

## **WHILE I AM PRACTISING LAW IN NOVA SCOTIA ON A TEMPORARY BASIS AM I AUTHORIZED TO GIVE AN UNDERTAKING TO A NOVA SCOTIA LAWYER?**

Yes, in accordance with the Nova Scotia Barristers' Society's Code of Professional Conduct.

## **IF AN ALLEGATION OF MISCONDUCT OR INCOMPETENCE OR INCAPACITY IS MADE AGAINST ME WITH RESPECT TO MY PRACTICE OF LAW IN NOVA SCOTIA ON A TEMPORARY BASIS WHAT LAW SOCIETY GOVERNS THE MATTER?**

The law society of the governing body in which you are entitled to practice law will usually take carriage of the matter, in consultation with and with the cooperation of the Nova Scotia Barristers' Society. The Nova Scotia Barristers' Society may take carriage if the law society in which you are entitled to practice law agrees. The primary considerations in making such a decision will be public interest, convenience and cost.

## **HOW CAN I EXERCISE PERMANENT MOBILITY IN NOVA SCOTIA?**

Regulation 6.2 governs permanent mobility or transfer to the Bar of Nova Scotia. If you are entitled or authorized to practice law in another province or territory of Canada outside of Nova Scotia and a law society in a province or territory in which you are entitled or authorized to practice law has signed the NMA or TMA and implemented the provisions, Regulation 6.2 may apply to you.

Some situations are not straight-forward. You are urged to contact the Officer, Admissions, if you are unsure how to apply the Regulations to your situation.

## **WHAT IS THE APPLICATION PROCESS UNDER THE MOBILITY TRANSFER PROVISIONS OF REGULATION 6?**

You may apply by completing an Application for Admission on Transfer and submitting the application and all necessary documentation and fees to the Nova Scotia Barristers' Society.

If you do not qualify under the NMA or TMA, you must first contact your

law society and determine what you must do to qualify under the NMA so that your Certificate of Standing from that jurisdiction will confirm that you qualify as an NMA or TMA applicant.

If you are unable or unwilling to take the action necessary so that you qualify under the NMA or TMA mobility provisions, you would not qualify for admission on transfer under mobility, and Regulation 6.2.6 will apply.

If you qualify under the NMA or TMA and there are no public interest issues identified in your application, Admissions staff will process the completed application form and issue a ruling. Generally, if you qualify under the NMA or TMA and there are no public interest issues, you will be required to read the Bar Review Materials and provide an Affidavit to that effect in order to be eligible for admission to the Nova Scotia Bar. The Bar Review Materials will be provided to you, upon receipt of the transfer application and payment of the transfer application and Bar Review Materials fees.

Once you provide the Affidavit certifying that you have read and understood the Bar Review Materials, you will be eligible for the next call to the Bar ceremony. You will then be provided with an admission package which will give you the information you need as to what documents are required in order to be called to Bar as well as the required fees to be paid.

Currently, the Society schedules nine call dates per year. Call dates are set in April each year. You are not a member of the Barristers' Society until you are called to the Bar in Nova Scotia.

## **WHAT IS THE NATURE OF THE READING MATERIALS?**

The Bar Review Materials include readings on substantive law, professional responsibility and practice management. In addition, you will be required to review the Society's Regulations and the *Legal Profession Act*.

## **IF I BECOME A MEMBER OF THE NOVA SCOTIA BARRISTERS' SOCIETY AND INTEND TO RESIDE AND PRACTICE IN NOVA SCOTIA BUT WILL REMAIN A PRACTISING MEMBER OF THE LAW SOCIETY IN ANOTHER JURISDICTION, AM I REQUIRED TO HAVE INSURANCE IN BOTH?**

This depends on your circumstances and what you want to do.

You are urged to contact the Officer, Admissions in order to determine requirements applicable to your situation.