



## NOVA SCOTIA BARRISTERS' SOCIETY

### Policy on Foreign Legal Consultants

#### 1.1 Definition

**1.1.1** Regulation 1.1.1(n) pursuant to the *Legal Profession Act* (the “Act”) defines “foreign legal consultant” as “a person qualified to provide legal services in a jurisdiction other than Canada who practises the law of that foreign jurisdiction in the Province”.

#### Home Jurisdiction

**1.1.2** In this policy, the foreign jurisdiction in which the applicant is qualified to practice law will be called the “Home Jurisdiction”.

#### 2.1 Governing Regulation

**2.1.1** An applicant who wishes to become a foreign legal consultant is governed by Regulation 6.7.

#### 3.1 Permit Required

**3.1.1** Before a person with foreign legal qualifications who wishes to give legal advice in Nova Scotia respecting the laws of their Home Jurisdiction may act as a foreign legal consultant, they must first obtain a permit from the Executive Director of the Nova Scotia Barristers' Society (the “Society”).

#### Application to be a foreign legal consultant

**3.1.2** Regulation 6.7.2 prescribes the contents of the permit application. The applicant must complete and submit to the Executive Director an application in the prescribed form, accompanied by the prescribed fee, containing the following information:

- (a) Contact Information;
- (b) Professional history;
- (c) Information confirming good character;
- (d) Information confirming fitness;
- (e) Confirmation that the applicant has practiced the law of their Home Jurisdiction for at least three complete years, or if the applicant has not practiced for three complete years, an undertaking in writing to work only under the direct supervision of another foreign legal consultant from the Home Jurisdiction who holds a permit from the Executive Director;
- (f) Certificates of Standing from each law society of which the applicant is a member which provide documentary evidence that the applicant is a member in good standing of the legal profession in each jurisdiction, including the Home Jurisdiction;
- (g) A written undertaking that the applicant will not accept, hold, transfer, or in any other manner, deal with trust money or property;
- (h) A written undertaking that the applicant will submit to the jurisdiction of the Society and comply with the *Legal Profession Act* and its Regulations;

- (i) A written undertaking that the applicant will notify the Executive Director if they fail to satisfactorily complete any continuing legal education program that is required by their Home Jurisdiction;
- (j) Proof of professional liability insurance or a bond or indemnity or other security in a form and amount which is reasonably comparable to that maintained by the Society in its mandatory liability insurance program<sup>1</sup>, and which specifically extends to the services rendered by the foreign legal consultant while acting as a foreign legal consultant in Nova Scotia;
- (k) Proof that the applicant participates in a defalcation program or carries a fidelity bond or other security satisfactory to the Society and is of a type and in an amount prescribed by Council for purposes of reimbursing persons who sustained a pecuniary loss as a result of misappropriation or conversion by the foreign legal consultant of money or other property entrusted to or received by the foreign legal consultant in his or her capacity as a foreign legal consultant<sup>2</sup>; and
- (l) Other information that may be required by the Executive Director or the Credentials Committee.

### **Translation of Documents**

**3.1.3** If documents supporting the application are written in a language other than English:

- (a) the Executive Director will have the documents translated, and
- (b) the applicant will pay the cost of the translation.

### **Approval by the Executive Director**

**3.1.4** The Executive Director may approve an applicant as a foreign legal consultant, with or without terms, and issue a permit to the applicant if:

- (a) the application satisfactorily meets the requirements of Regulation 6.7.2; and
- (b) it is consistent with the public interest to do so.

### **Application Denied or Approved with Terms**

**3.1.5** If the Executive Director makes a decision denying the application Executive Director will provide the applicant with written reasons. The Executive Director's decision is final.

### **Continuing Obligation on Applicant**

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<sup>1</sup> Currently, in Nova Scotia every member of the Society must participate in a compulsory liability insurance program which provides coverage in the amount of \$1 million per claim with an aggregate coverage limit of \$2 million per lawyer per year. The program provides coverage for errors and omissions made by members in the course of their providing professional services for others in their capacity as members of the Nova Scotia Barristers' Society.

<sup>2</sup> Every member of the Society is required to contribute to the Lawyers' Fund for Client Compensation. The purpose of the Fund is to compensate claimants who have sustained pecuniary losses because of misappropriation or wrongful conversion of the claimants' money or property by a member of the Society or by a law corporation. Because foreign legal consultants are not members of the Society, the Lawyers' Fund for Client Compensation cannot be used to reimburse clients who suffer a loss because of a consultant's misappropriation or wrongful conversion.

**3.1.6** As long as a foreign legal consultant holds a permit, they have a continuing obligation to:

- (a) maintain professional liability insurance coverage and defalcation coverage satisfactory to the Society, and must inform the Executive Director immediately of the cancellation of, or any significant change to, their coverages;
- (b) notify the Executive Director immediately if they cease to be entitled to practice law in the Home Jurisdiction; and
- (c) notify the Executive Director immediately if they fail to satisfactorily complete any continuing legal education program that is required by members of their Home Jurisdiction.

#### **4.1 Duration of a Permit**

**4.1.1** A permit is valid for one year, beginning on the date it is issued, and may be renewed prior to its expiry, on an annual basis, by submitting an application, including supporting documentation, and paying the applicable fee, unless:

- (a) the foreign legal consultant is suspended as a result of proceedings under the Act or its Regulations;
- (b) the foreign legal consultant's professional liability insurance required pursuant to Regulation 6.7.2(h) lapses or is cancelled;
- (c) the foreign legal consultant's defalcation coverage required pursuant to Regulation 6.7.2(i) lapses or is cancelled; or
- (d) the foreign legal consultant ceases to be entitled to practice the law of the Home Jurisdiction.

#### **5.1 Unauthorized Practice**

**5.1.1** A person who acts as a foreign legal consultant, or holds themselves out as such, without a valid permit, is engaged in the unauthorized practice of law and is liable to prosecution or to injunction proceedings by the Society.

**5.1.2** A foreign legal consultant holding a valid permit may only give legal advice respecting the law of the Home Jurisdiction, and is not permitted, to engage in any other aspects of the practice of Canadian law. This would also be considered unauthorized practice and would make the foreign legal consultant liable to prosecution or injunction proceedings by the Society.

#### **6.1 Promotion of Legal Services**

**6.1.1** Regulation 6.7.6 states:

**6.7.6** A foreign legal consultant must, when engaged in any promotional activities in the Province:

- (a) use the term "foreign legal consultant,"
- (b) state the foreign jurisdiction in respect of which he or she is qualified to practise law and the professional title used in that jurisdiction,

(c) state that he or she is not a member of the Society.

**6.1.2** A foreign legal consultant holding a valid permit who has been called to the Bar in a foreign jurisdiction is permitted to use the title “Lawyer” on their letterhead and in correspondence; however, the signature block of the consultant’s correspondence must make clear to the public that the consultant is not licenced to practise Canadian law.

**6.1.3** Similarly, a foreign legal consultant holding a valid permit is permitted to use the title “Lawyer” in any promotional materials as long as it is clear to the public that the consultant is not licenced to practise Canadian law.

**6.1.4** A foreign legal consultant who is affiliated with a Nova Scotia law firm may be listed on the firm’s letterhead if they are clearly designated as a foreign legal consultant.

*Approved by the Credentials Committee – May 24, 2013*

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