

# Inter-jurisdictional Practice of Law (Mobility)

## 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 New Brunswick should read the applicable rules. In the event of any discrepancy between these FAQs and the rules, the rules apply.

Any inquiries should be directed to the Director of Admissions, Lise Allain at [lallain@lawsociety-barreau.nb.ca](mailto:lallain@lawsociety-barreau.nb.ca) or at (506) 458-8540.

### 1. What is meant by Inter-jurisdictional practice of law (mobility)?

Inter-jurisdictional practice of law 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 New Brunswick, the rules addressing temporary mobility are based upon Agreements negotiated among members of the Federation of Law Societies of Canada to which the Law Society of New Brunswick is a signatory. These agreements are:

- the *Inter-Jurisdictional Practice Protocol* (signed 1994);
- the *National Mobility Agreement* (signed July 2006);
- the *Territorial Mobility Agreement* (signed November 2006).

In New Brunswick, 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* and *Territorial Mobility Agreement* referred to above.

*NOTE: Lawyers from provinces or territories outside of New Brunswick who are interested in temporary or permanent mobility should familiarize themselves with the applicable Rules.*

*Lawyers from New Brunswick 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 National Mobility Agreement and/or Territorial Mobility Agreement and has implemented rules under those Agreements (see below).*

### 2. What rules govern mobility in New Brunswick?

The main mobility provisions are contained in two rules:

- Rules 44 to 45 (Transfer of a member of a reciprocating governing body); and
- Rules 59.1 to 59.11 (Inter-jurisdictional practice/temporary mobility).

### **3. How Do I know which rules or part of rules apply to me?**

The *National Mobility Agreement* will apply only to lawyers who are “entitled to practise law” in a jurisdiction that has signed the *National Mobility Agreement* and adopted regulatory provisions giving effect to the requirements of the Agreement. The following jurisdictions have signed the *National Mobility Agreement*:

British Columbia  
Alberta  
Saskatchewan  
Manitoba  
Ontario  
Quebec  
New Brunswick  
Nova Scotia  
Newfoundland and Labrador  
Prince Edward Island

**British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Newfoundland and Labrador and Prince Edward Island have adopted the necessary regulatory requirements to implement the Agreement.**

The *National Mobility Agreement* is a reciprocal agreement. In other words, both a jurisdiction in which the lawyer is a member authorized/entitled to practice law and the jurisdiction in which the lawyer wishes to exercise temporary or permanent mobility must have signed the Agreement and adopted rules implementing it. Otherwise, the lawyer will be subject to the same mobility requirements as those from non-signatory, non-reciprocating jurisdictions.

In November 2006, the three territorial law societies (Northwest Territories, Nunavut and Yukon) and all the signatories to the National Mobility Agreement signed the Territorial Mobility Agreement. Pursuant to that Agreement, the signatories agreed that the territorial law societies will participate in national mobility as reciprocating governing bodies with respect to permanent mobility (transfer of lawyers from one jurisdiction to another), without a requirement that they participate in the temporary mobility provisions. This arrangement may subsist for a period of up to five years. On January 1, 2012, the TMA will expire and the signatories will be under no further obligation and have no further rights under the Territorial Mobility Agreement.

For lawyers who are not authorized/entitled to practise law in jurisdictions that have signed and implemented the *National Mobility Agreement*, but are entitled to practise in jurisdictions that have signed and implemented the 1994 *Inter-Jurisdictional Practice Protocol* (IJPP), the IJPP will continue to apply with respect to temporary mobility. With respect to permanent (transfer), lawyers who are not authorized/entitled to practise law in jurisdictions that have signed the *National Mobility Agreement* or the *Territorial Mobility Agreement* must comply with the relevant jurisdiction’s transfer provisions for non-signatory jurisdictions.

Lawyers from jurisdictions that have not implemented any of the Inter-Jurisdictional Practice Protocol, the National Mobility Agreement or the Territorial Mobility Agreement must contact the relevant law society to determine what rules are in place to address their situation.

### **4. How can I exercise temporary mobility in New Brunswick?**

Rules 59.1 to 59.11 provides for the “occasional practice of law” in New Brunswick. These Rules sets out the provisions for temporary mobility with or without a permit.

If you have professional liability insurance coverage and defalcation coverage in accordance with the requirements set out in the rules, you may without permission of Law Society of New Brunswick practice law on an occasional basis if you:

- (a) are authorized to practise law in a province or territory of Canada outside of New Brunswick;
- (b) have no conditions or restrictions on your practice or your membership of the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency, capacity, admission or reinstatement;
- (c) are not the subject of criminal or disciplinary proceedings in any jurisdiction;
- (d) have no disciplinary record in any jurisdiction;
- (e) do not establish an economic nexus with New Brunswick. (see below)

If you are ineligible for mobility without prior permission, you must apply for a permit to practise law on an occasional basis in New Brunswick in accordance with Rule 59.6. If permission is granted, the Society may impose such terms and conditions as it considers appropriate. Currently, there is no fee for such an application.

## **5. What does “entitled to practise law” mean?**

Some of the provinces and territories will use the term “authorized to practice law”. New Brunswick uses “entitled to practise.”

In both cases this means that a prerequisite to being eligible to practise law occasionally in New Brunswick or to transferring permanently to New Brunswick (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 practise law.

So, for example, if you are required to have insurance in your home province in order to be considered entitled to practise, and you do not currently have it, you are not entitled to practise law in New Brunswick on an occasional basis and you are not eligible to transfer under Rule 44.1.

If you wish to take advantage of Rule 44.1, you must become entitled to practise.

So, for example: if you have a non-practising status in Nova Scotia and wish to transfer to the Law Society of New Brunswick, you must be re-instated to practising insured status in Nova Scotia before applying to New Brunswick.

## **6. If I am eligible for mobility, is there any limitation on this eligibility?**

You may practise law on an occasional basis 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 practise law on an occasional basis in or with respect to the law of New Brunswick. The Society may require you to provide proof of compliance with the rule, including proof of the number of days on which you have practised law on an occasional basis in New Brunswick.

## **7. 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.

## **8. When do I begin counting the 100 days in 2006?**

You would begin counting on the first day you begin practising law on an occasional basis in New Brunswick.

## **9. What constitutes the practice of law?**

You will be considered to be practising law in New Brunswick if:

- (a) you perform professional services for others as a barrister or solicitor with respect to, or relying on the laws of New Brunswick or the laws of Canada applicable to New Brunswick; or
- (b) you give legal advice with respect to the laws of New Brunswick or the laws of Canada applicable in New Brunswick.

This means that you could be practising law in New Brunswick whether or not you are physically in New Brunswick. For example, if you are giving legal advice with respect to the laws of New Brunswick on the telephone, by email or through correspondence from a province outside of New Brunswick, you are considered to be practising law in New Brunswick. **You must therefore keep track of all of these activities.**

It also means that you are practicing law in New Brunswick if you do so with respect to the laws of Canada applicable to New Brunswick.

Lawyers who practise law on an occasional basis for a single employer (corporate counsel) will also be considered to be practising law for the purpose of Rules 59.1 to 59.11.

You will not be considered to be practising law in New Brunswick for the purposes of the mobility rules 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 Appeal
- (c) the Federal Court;
- (d) the Tax Court of Canada;
- (e) a tribunal established under an Act of Parliament;
- (f) a service tribunal within the meaning of the *National Defence Act* (Canada) or
- (g) 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 rules.

## **10. What does it mean to establish an economic nexus within New Brunswick?**

An economic nexus with New Brunswick is established if, while practising law on an occasional basis in New Brunswick, you do something that is inconsistent with practising law only on an occasional basis. If this kind of connection is established, you must cease practising law immediately, but may apply to transfer to New Brunswick.

You would establish an economic nexus with New Brunswick if you:

- practise law in New Brunswick for more than the maximum number of days permitted under rule 59.3 (maximum of 100 days in a calendar year);

- open an office in New Brunswick from which to practise law;
- open or operate a trust account at a financial institution located in New Brunswick,
- receive money in trust for a client, other than as set out below;
- hold yourself out as willing to accept new clients in New Brunswick;
- become resident in New Brunswick;
- act in any manner inconsistent with practising law in New Brunswick only on an occasional basis.

**11. What happens if I establish an economic nexus with New Brunswick?**

You are no longer eligible to practise law on an occasional basis in New Brunswick and must cease doing so immediately. You may, however, apply to become a member of the Law Society of New Brunswick (Rules 44 to 45).

**12. I am a partner, employee, associate in a law firm with offices in more than one province. Do I establish an economic nexus with New Brunswick by practising law from our New Brunswick office?**

The Rules provide that you do not establish an economic nexus by a reason only that you practise law from an office that is affiliated with a law office in a province or territory of Canada in which you are authorized to practise law. However, this only applies if your home office is in a reciprocating province.

**13. While I am practising law in New Brunswick on an occasional basis, can I receive money in trust for a client?**

If you are permitted to practise law in New Brunswick on an occasional basis under Rules 59.1 to 59.11, 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 practise law (e.g. your home jurisdiction) or you pay the money into a trust account that is kept in the name of and operated by a member of the Law Society of New Brunswick in accordance with the New Brunswick *Uniform Trust Account Rules* and the money is handled only by the New Brunswick member in accordance with the applicable rules.

**14. Are there restrictions on advertising when I am practising law on an occasional basis?**

Yes. You must not hold yourself out to be qualified or willing to practise law in New Brunswick, except as a visiting lawyer on an occasional basis. 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 practise law.

**15. How will third parties know I have the right to practise law on an occasional basis in New Brunswick without a permit?**

A National Database will be in operation that allows law societies to determine whether a lawyer is eligible to practise law in New Brunswick on an occasional basis without a permit. A third party wishing to make inquiries about a lawyer can contact the Law Society of New Brunswick.

**16. While I am practising law in New Brunswick on an occasional basis, am I subject to the *Law Society Act, 1996*?**

*The Law Society Act, 1996*, the rules and the *Code of Professional Conduct* apply to you with necessary modifications.

**17. While I am practising law in New Brunswick on an occasional basis, can I commission affidavits?**

No. The *Commissioners for Taking Affidavits Act* provides that solicitors entitled to practise law in New Brunswick are commissioners for taking affidavits by virtue of their office. A lawyer practising law on an occasional basis would not meet the necessary definition.

The *Notaries Public Act* sets out the basis upon which a person may become a notary in the province of New Brunswick. The appointment is done by the Lieutenant-Governor in Council who may appoint much persons as the Lieutenant-Governor in Council considers fit. The person must apply and meet the criteria set out in the Act.

**18. While I am practising law in New Brunswick on an occasional basis, may I give an undertaking to a New Brunswick lawyer?**

Yes, in accordance with the Law Society of New Brunswick's *Code of Professional Conduct*.

**19. If I am in-house counsel in another province, do I require professional liability insurance to practise law in New Brunswick on an occasional basis?**

No. Provided you are otherwise eligible to practise law on an occasional basis in New Brunswick and you continue to function only as in-house counsel while in New Brunswick, you do not require professional liability insurance. For complete information on insurance requirements, you should read Rule 83(1).

**20. If I practice as part of an LLP or Professional Corporation in another jurisdiction, does that status automatically apply in the jurisdiction in which I exercise temporary mobility?**

The *National Mobility Agreement* and the rules of each signatory jurisdiction set out the rules for mobility for individual lawyers. Lawyers must determine whether the jurisdiction in which they wish to exercise temporary mobility has provisions for LLPs and Professional Corporations and, if so, what those provisions require.

**21. If an allegation of misconduct or incompetence or incapacity is made against me with respect to my practice of law in New Brunswick on an occasional basis, what law society governs the matter?**

The law society of the governing body in which you are authorized to practise law will usually take carriage of the matter, in consultation with and with the cooperation of the Law Society of New Brunswick. The Law Society of New Brunswick may take carriage if the law society in which you are authorized to practise law agrees. The primary considerations in making such a decision will be public interest, convenience and cost.

**22. How can I exercise permanent mobility in New Brunswick?**

Rules 44 to 45 govern permanent mobility or transfer to the Law Society of New Brunswick. If you are entitled or authorized to practise law in a province or territory of Canada outside of New Brunswick and a law society in a province or territory in which you are entitled or authorized to practise law has signed the *National Mobility Agreement* or the Territorial Mobility Agreement and implemented its provisions Rule 44.1 may apply to you.

**23. What do I have to do to transfer under Rule 44.1?**

You must first be authorized/entitled to practise law in accordance with the definition given to that term by the law society from which you are making the application to transfer. For more discussion of this, see question 5 above.

If you are not so authorized or entitled to practise law, you must (a) take steps to become authorized or entitled or (b) apply to transfer pursuant to Rule 44.

To be admitted to the Law Society of New Brunswick under Rule 44.1, you must:

- (a) be authorized to practise law in a province or territory of Canada outside New Brunswick;
- (b) have fulfilled the requirements of the *Law Society Act, 1996* for admission to membership in the Society (be of good character, etc.);
- (c) have an LLB from a Canadian law school or have a certificate of qualification from the National Committee on Accreditation; and
- (d) have certified that you have reviewed and understand the materials that the Law Society requires you to review.

## **24. How soon can I apply for transfer under Rule 44.1? What is the process?**

You may apply now by completing an Application for Transfer (Form 11) and submitting the application and all necessary documentation to the Director of Admissions, Lise Allain, at [lallain@lawsociety-barreau.nb.ca](mailto:lallain@lawsociety-barreau.nb.ca) or at (506) 458-8540.

Upon receipt of the completed application form and fees, the Society will send you the reading materials and the prescribed form to certify once you complete the review of the materials. The Society will then process your application form.

Once the application is processed and you return the certification, you will be required to pay the admission fee and will be advised of the next scheduled admission ceremony.

The Society schedules approximately 6 admissions per year. You are not a member of the law society until you are admitted to the Law Society.

## **25. What is the transfer fee?**

The transfer fee is \$ 1,500 plus HST.

## **26. What is the nature of the reading material?**

The reading materials are being adapted from the Bar Admission Course materials and will include readings on substantive law, professional responsibility and practice management. In addition, you will be required to review the *Law Society Act, 1996* and its Rules, the *Code of Professional Conduct*, the *Rules of Court and Forms* and all other statutes required by the Law Society of New Brunswick.

## **27. If I become a member of the Law Society of New Brunswick and intend to reside and practise in New Brunswick but will remain a practising member of the law society in another jurisdiction, am I required to have insurance in both?**

You may apply for exemption from the insurance requirements in the other jurisdiction provided that you are resident in New Brunswick and maintain full mandatory professional liability insurance coverage here that is reasonably comparable in coverage and limits to that required of lawyers there.