

**INTER-JURISDICTIONAL  
PRACTICE**

**P R O T O C O L**

**AGREEMENT SIGNED ON  
FEBRUARY 18, 1994  
IN JASPER, ALBERTA.**

Amended:  
February 24, 1995,  
March 2, 1996 and  
August 28, 1998

*This copy includes the amendments,  
including the signature  
of the Barreau du Québec  
on March 2, 1996.*

---

**Federation of Law Societies of Canada /**  
Fédération des professions juridiques du Canada  
480 - 445, boulevard Saint-Laurent  
Montréal, Québec  
H2Y 2Y7  
Tel (514) 875-6350  
Fax (514) 875-6115  
<http://www.flsc.ca>  
[pafoley@flsc.ca](mailto:pafoley@flsc.ca)

# FEDERATION OF LAW SOCIETIES OF CANADA

## INTER-JURISDICTIONAL PRACTICE

### PROTOCOL

February 18, 1994

WHEREAS the signatories are governing bodies of the profession of law in Canada,

AND WHEREAS the signatories recognize that Canadian lawyers have constitutional rights relating to the inter-provincial practice of law,

AND WHEREAS the signatories recognize that it is in the interests of the public and of the legal profession of Canada to facilitate the inter-jurisdictional practice of law in a manner which is consistent with the duty imposed on the signatories to regulate the practice of law within their jurisdictions so as to ensure that their members practice law competently, ethically and with financial responsibility,

AND WHEREAS the December 1990 report of the Federation of Law Societies' Inter-Jurisdictional Practice Committee, which recommended a comprehensive regulatory regime for the inter-jurisdictional practice of law, was approved in principle on February 22, 1991,

AND WHEREAS the signatories recognize that differences exist with respect to certain aspects of the existing legislation, policies and programs of the signatories,

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

NOW THEREFORE the signatories agree:

1. to implement in their respective jurisdictions a regulatory regime for the inter-jurisdictional practice of law as described in this Protocol;
2. to use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations which are necessary or advisable in order to implement the regulatory regime referred to in paragraph 1;

3. to amend their own rules, policies and programs to the extent they consider necessary or advisable in order to implement the regulatory regime referred to in paragraph 1;
4. to work cooperatively with the other signatories to resolve differences and ambiguities regarding the inter-jurisdictional practice of law in legislation, policies and programs which presently exist or which in the future may arise between or among the signatories, and to execute with one or more signatories such specific agreements as they may deem advisable to resolve such differences and ambiguities;
5. that in this Protocol and in the Appendices, unless otherwise specified:

**"home governing body"** means a governing body 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,

**"lawyer"** means a member of a signatory and, in the case of the Province of Quebec, includes a notary member of La Chambre des Notaires du Québec,

**"misconduct"** includes professional misconduct, conduct unbecoming a member of a signatory and any other breach of a member's professional responsibilities to a signatory;

6. that in matters of individual mobility they will facilitate:
  - a. the temporary mobility of lawyers within Canada, by adopting rules or regulations substantially the same as or less restrictive than those set out in Appendix 1 to this Protocol,
  - b. the permanent mobility of lawyers within Canada, by adopting rules or regulations substantially the same as or less restrictive than those set out in Appendix 2 to this Protocol,
  - c. the issuance of permits to foreign legal consultants, by adopting rules or regulations substantially the same as or less restrictive than those set out in Appendix 3 to this Protocol, and
  - d. the provision of legal services by inter-jurisdictional law firms, by adopting rules or regulations substantially the same as or less restrictive than those set out in Appendix 4 to this Protocol;
7. that they shall enforce professional standards in relation to lawyers who practise law inter-provincially, in the following manner:
  - a. a lawyer who practises in a host jurisdiction in accordance with Appendix 1 shall disclose to the host governing body, on request, all the governing bodies of the legal profession in Canada of which he or she is a member,

- b. where a signatory initiates disciplinary proceedings against one of its members or against a member of another signatory, it shall notify each other signatory of which that person is a member, of those proceedings,
- c. in the event of alleged misconduct arising out of a lawyer's practice in a host jurisdiction:
  - (i) the host governing body shall assume responsibility for the conduct of disciplinary proceedings against the lawyer unless the host governing body and the lawyer's home governing body or bodies agree to the contrary, and
  - (ii) the host governing body and the home governing body or bodies will consult respecting the manner in which disciplinary proceedings will be taken against the lawyer, each participating governing body agreeing to be bound by any agreement reached,
- d. where a signatory investigates the conduct of or takes disciplinary proceedings against a lawyer, that lawyer's home governing body or bodies, and each other signatory in whose jurisdiction the lawyer has practised under Appendix I will cooperate with the investigation or disciplinary proceedings, or both, by providing all relevant information and documentation respecting the lawyer as is reasonable in the circumstances,
- e. in determining the venue for disciplinary proceedings under subparagraph (c), the primary considerations shall be the public interest, convenience and cost,
- f. where a host governing body initiates disciplinary proceedings against a lawyer under subparagraph (c), it shall assume full responsibility for conduct of the proceedings and, subject to any agreement between or among the governing bodies, for the cost of the proceedings,
- g. where a host governing body takes disciplinary proceedings against a lawyer under subparagraph (c), it shall have initial authority to do one or more of the following:
  - (i) reprimand the lawyer,
  - (ii) require the lawyer to pay a fine or costs, or both,
  - (iii) prohibit the lawyer from practising law in its jurisdiction permanently or for a specified period of time,
  - (iv) declare that, had the lawyer been one of its members, he or she would have been:
    - (A) disbarred, or
    - (B) suspended or had conditions of practice imposed, or both,

- h. where a host governing body takes action under subparagraph (g), it shall notify each home governing body of the action taken,
  - i. a home governing body shall take disciplinary proceedings against a member:
    - (i) who fails to pay a fine or costs required to be paid to a host governing body arising out of that member's inter-provincial practice, or
    - (ii) who practises law in a host jurisdiction in violation of a prohibition made under subparagraph (g)(iii),
 and may impose any penalty which it considers appropriate,
  - j. a home governing body shall take disciplinary proceedings against a member in respect of whom a declaration is made by a host governing body under subparagraph (g)(iv) arising out of that member's inter-provincial practice, and may impose any penalty which it considers appropriate,
  - k. a home governing body may also take disciplinary proceedings against a member, notwithstanding that the member has been the subject of disciplinary proceedings in a host jurisdiction for the same or related misconduct, and may impose any penalty which it considers appropriate,
  - l. in any proceedings under subparagraphs (i) to (k), the filing of a duly certified copy of the disciplinary decision rendered by a host governing body against a member found guilty of misconduct is proof of that member's guilt;
- 7.1 that where an inter-jurisdictional law firm does not pay, by the date it is due, a fine imposed by a signatory under Appendix 4, subsection (6)(b), each other signatory in whose jurisdiction the firm provides legal services to the public may prohibit its members from practising law as members of the inter-jurisdictional law firm until the fine is paid in full;
8. that they will notify each other in writing, as soon as practicable, of any changes to their compulsory liability insurance policies which affect the limits of liability or scope of coverage;
- 8.1 that in paragraphs 9 and 10, "**home governing body**" means a governing body of the legal profession in Canada of which a lawyer is a member and includes, in the case of a lawyer who is a member of two or more signatories, the governing body of the province or territory in which the lawyer principally practises law, and "**home jurisdiction**" has a corresponding meaning.
9. that in matters of liability insurance, in the event that a practising member in good standing of a home governing body suffers a professional liability claim as a result of the practice of law in a host jurisdiction, and if the member does not have professional liability insurance or the insurance is insufficient in that:

- a. the limit of liability is less than \$1 million per occurrence and \$2 million per member aggregate limit per year, inclusive of defence costs and interest, or
- b. the coverage is narrower in scope than that of the professional liability insurance required of members of the host governing body,

then the home governing body agrees to indemnify the claimant up to a maximum of \$1 million per occurrence and \$2 million per member aggregate limit per year, inclusive of defence costs and interest, to the extent of coverage required of members of the host governing body;

10. that in matters respecting the compensation of clients and other persons ("claimants") who sustain a financial loss arising from the misappropriation of monies or property by a lawyer while engaged in the inter-provincial practice of law:
  - a. each signatory will ensure that its compulsory liability insurance policy includes "innocent insured" coverage, and that such coverage extends to its members' inter-provincial practice,
  - b. each signatory will process an application for compensation in accordance with Appendix 6, which incorporates the following principles:
    - (i) the home and host governing bodies will cooperate with each other in processing a claim in accordance with paragraph 9 of Appendix 6,
    - (ii) where a claim is established under paragraph 9 of Appendix 6, the home governing body will compensate the claimant in accordance with paragraph 11 of Appendix 6,
    - (iii) each signatory will contribute to a National Excess Plan in accordance with paragraphs 4 and 5 of Appendix 6, for the purpose of providing further compensation to claimants in those circumstances specified in Appendix 6,
    - (iv) if the amounts paid by the National Excess Plan under paragraphs 12 to 19 of Appendix 6 do not fully compensate the claimant, the claimant may be eligible for further compensation from the home governing body to the extent specified in paragraphs 20 and 21 of Appendix 6,
  - c. each signatory agrees that compensation under this paragraph shall be awarded in accordance with the following principles:
    - (i) no claimant who is eligible for or who receives an indemnity payment under the lawyer's compulsory professional liability insurance policy is eligible for any compensation under this paragraph, except for any unpaid deductible amount under that policy,
    - (ii) no claimant shall be eligible to receive more than the claimant would have received, had the claim been made under the host governing body's domestic compensation program,

- (iii) no home governing body shall be required to contribute more to a claimant than it would have paid, had the claim been made under its domestic compensation program,
  - (iv) no claimant shall receive more than \$450,000 from the National Excess Plan, and
  - (v) any compensation received by the claimant from the lawyer or from any other person shall be deducted from any amount which the claimant would otherwise receive under Appendix 6,
- d. a signatory may require that another signatory submit to binding arbitration:
  - (i) for a determination of whether the claim arose during the inter-provincial practice of law, or
  - (ii) to resolve any dispute respecting the interpretation or application of Appendix 6;
- 11. to exert their best efforts, and to cooperate with the other signatories, in implementing this Protocol;
- 12. to cooperate in the sharing of information, and in the development of programs for that purpose, respecting their members and their legislation, policies and programs in order to implement and maintain the regulatory regime referred to in paragraph 1;
- 13. to maintain ongoing consultation respecting the effectiveness of this Protocol, and to work cooperatively in amending the Protocol from time to time in order to implement and maintain the regulatory regime referred to in paragraph 1;
- 14. that in the event that a dispute arises between or among signatories respecting a matter which is the subject of this Protocol:
  - a. the home and host governing bodies (the "parties") may refer the matter to a single mediator to be selected by them, and
  - b. if mediation is not used, or if mediation is used but does not resolve the dispute, the parties shall arbitrate the matter in accordance with the rules set out in Appendix 5 to this Protocol;
- 15. that by executing this Protocol they declare their intention to implement and to be bound by its terms, subject to obtaining necessary amendments to their legislation, regulations, rules, policies and programs and obtaining necessary insurance coverage;
- 16. that each signatory shall:
  - a. notify each other signatory in writing when it is ready, willing and able to implement this Protocol, and

- b. 30 days after such notification, accept the Protocol as legally binding on it, in relation to each other signatory which has become legally bound to comply with it;
- 17. that a signatory may, with 90 days' written notice to each other signatory, cease to be legally bound thereafter to comply with the Protocol, in which case that signatory shall forthwith so notify its members in writing and require that those of its members who practise inter-provincially ascertain from another signatory its requirements for inter-provincial practice before practising temporarily in, or transferring permanently to, that jurisdiction;
- 18. *Deleted. August 28, 1998.*

|  |               |
|--|---------------|
| LAW SOCIETY OF ALBERTA                   | _____         |
|  | per President |
| LAW SOCIETY OF BRITISH COLUMBIA          | _____         |
|  | per Treasurer |
| LAW SOCIETY OF MANITOBA                  | _____         |
|  | per President |
| LAW SOCIETY OF NEW BRUNSWICK             | _____         |
|  | per President |
| LAW SOCIETY OF NEWFOUNDLAND              | _____         |
|  | per Treasurer |
| NOVA SCOTIA BARRISTERS' SOCIETY          | _____         |
|  | per President |
| LAW SOCIETY OF THE NORTHWEST TERRITORIES | _____         |
|  | per President |
| LAW SOCIETY OF UPPER CANADA              | _____         |
|  | per Treasurer |
| LAW SOCIETY OF PRINCE EDWARD ISLAND      | _____         |
|  | per President |
| BARREAU DU QUÉBEC                        | _____         |
|  | per Bâtonnier |
| CHAMBRE DES NOTAIRES DU QUÉBEC           | _____         |
|  | per Président |
| LAW SOCIETY OF SASKATCHEWAN              | _____         |
|  | per President |
| LAW SOCIETY OF YUKON                     | _____         |
|  | per President |
| DATED: _____, 1994.                      |               |

**(Page 8a**

Inter-jurisdictional Practice Protocol executed by the Barreau du Québec  
in Montreal, on March 2, 1996 BY:

\_\_\_\_\_  
Me Jocelyne Olivier  
Bâtonnière, Barreau du Québec

## APPENDIX 1- TEMPORARY MOBILITY OF LAWYERS WITHIN CANADA

### *Amendment to Legislation*

The Benchers may make rules respecting the conditions under which a member of the legal profession of another Canadian province or territory may practise law in this province.

### *Law Society Rule*

#### **Definitions**

(1) In this Rule:

**"law which is specific to this jurisdiction"** includes topics of substantive and procedural law which, whether statutory or common law, are specific in their application to this province;

**"lawyer"** means a member of another governing body of the legal profession in Canada who is not a member of this Society and, in the case of the Province of Quebec, includes a notary member of La Chambre des Notaires du Québec;

**"occasional"** means less than regular, systematic or habitual;

**"practice of law"** means those activities which are by law reserved to members of the Society.

#### **Practising occasionally**

(2) A lawyer practises occasionally who,

- (a) engages in the practice of law in this province on not more than 10 matters and for not more than 20 days in total during any 12-month period, or such greater number of matters or days as permitted by this Society because of special circumstances, and
- (b) is not held out to the public in this province as being willing or qualified to practise law in this province.

#### **Duty to obtain competent advice**

- (3) Where consultation with a member of this Society is required in accordance with this Rule, the consultation process imposes a duty:
  - (a) on the lawyer, to disclose fully to each member of this Society with whom the lawyer consults, all factual information which is necessary in order that

the member of this Society can fulfil his or her responsibilities under (b), and

- (b) on each member of the Society who is consulted, to be substantially involved in all jurisdiction-specific matters in respect of which the member is consulted.

### **Requirements for a lawyer's practice in the province**

- (4) To engage in the practice of law in this province, a lawyer shall, as specified in subrules (5) to (18), comply with whichever of the following are applicable:
  - (a) be a member in good standing of another governing body of the legal profession in Canada;
  - (b) carry professional liability insurance which
    - (i) extends to the lawyer's practice of law in this province, and
    - (ii) is reasonably comparable in coverage and amount to that maintained under this Society's compulsory program;
  - (c) have defalcation coverage which
    - (i) extends to the lawyer's practice of law in this province, and
    - (ii) is reasonably comparable in coverage and amount to that maintained by this Society;
  - (d) not presently be the subject of criminal or disciplinary proceedings in any jurisdiction;
  - (e) have no discipline record in any jurisdiction in which the lawyer is or was a member and no criminal record;
  - (f) pay an administrative fee to this Society, as fixed by the Benchers;
  - (g) be competent to practise law, specific to this jurisdiction, which the lawyer intends to practise while in this province.

### **Federal courts and tribunals**

- (5) A lawyer who complies with paragraph 4(a) may appear in this province as counsel before the Supreme Court of Canada, the Federal Court of Canada, the Tax Court of Canada, a federal administrative tribunal, or a provincial administrative tribunal before which persons who are not members of this Society are permitted to appear.

### **Other courts and tribunals**

- (6) A lawyer may, in consultation with a member of this Society and in compliance with paragraphs (4)(a) to (d), appear occasionally in this province as counsel before any court or administrative tribunal other than one specified in subrule (5).

- (7) A lawyer who satisfies this Society in Form \_\_\_ of compliance with paragraphs (4)(a) to (f) may, in consultation with a member of this Society, appear more than occasionally in this province as counsel before any court or administrative tribunal other than one specified in subrule (5).
- (8) A lawyer who satisfies this Society in writing in Form \_\_\_ of compliance with paragraphs (4)(a) to (g) may, without consultation with a member of this Society, appear in this province occasionally as counsel before any court or administrative tribunal other than one specified in subrule (5).
- (9) A lawyer shall become a member of this Society before appearing in this province more than occasionally before any court or administrative tribunal other than one specified in subrule (5), without consultation with a member of this Society.

#### **Practising local law with consultation**

- (10) A lawyer may, on compliance with paragraphs (4)(a) to (d) and in consultation with a member of this Society, practise occasionally in this province law which is specific to this jurisdiction.
- (11) A lawyer who satisfies this Society in Form \_\_\_ of compliance with paragraphs (4)(a) to (f) may, in consultation with a member of this Society, practise more than occasionally in this province law which is specific to this jurisdiction.

#### **Practising local law without consultation**

- (12) A lawyer who satisfies this Society in writing in Form \_\_\_ of compliance with paragraphs (4)(a) to (g) may, without consultation with a member of this Society, practise occasionally in this province law which is specific to this jurisdiction.
- (13) A lawyer shall become a member of this Society before practising more than occasionally in this province, without consultation with a member of this Society, law which is specific to this jurisdiction.

#### **Practising law not specific to this jurisdiction**

- (14) A lawyer may, on compliance with paragraphs (4)(a) to (d), practise occasionally in this province law which is not specific to this jurisdiction.
- (15) A lawyer who satisfies this Society in writing in Form \_\_\_ of compliance with paragraphs (4)(a) to (f) may practise more than occasionally in this province law which is not specific to this jurisdiction.

#### **Exemption from requirements**

- (16) Notwithstanding anything in this Rule, the Society may permit a lawyer who does not meet the requirements of paragraphs (4)(d) and (e) to practise occasionally or more than occasionally on such terms and conditions as it deems appropriate if satisfied that such permission is not contrary to the public interest.

#### **Employees of the Crown in right of Canada**

- (17) A lawyer who is an employee of the Crown in right of Canada or is employed by a department as defined in the *Financial Administration Act*, RSC 1985, c. F-11 may, on compliance with paragraph (4)(a), practise law in this province for the Crown in right of Canada.

### **House counsel**

- (18) This Society may exempt a lawyer who as house counsel practises law in this province on behalf of his or her employer or one of its subsidiaries or affiliates, from compliance with subrules (4) to (16).

### **Compliance with local rules**

- (19) A lawyer who practises in this province under this Rule:
- (a) is bound by this Society's [Legal Profession] Act, Regulations, Law Society Rules and Professional Conduct Handbook, with the necessary changes and so far as they are applicable, and
  - (b) shall satisfy this Society on request that the lawyer has complied with and continues to comply with the requirements of paragraphs (4)(a) to (g) which apply to the lawyer.

### **A member's practice in another Canadian jurisdiction**

- (20) A member of this Society who practises law in any Canadian jurisdiction shall comply with the applicable legislation, regulations, rules and Professional Conduct Handbook of that jurisdiction.

### **Trust funds**

- (21) A lawyer who practises under this Rule:
- (a) shall not maintain a trust account in this province,
  - (b) may, while in this province, handle trust funds only if they are retainer funds which the lawyer promptly returns to the lawyer's trust account in the home jurisdiction in the form in which they were received, and
  - (c) shall, if the lawyer's representation of the client requires the handling of trust funds, ensure that such funds are handled by a member of this Society in accordance with this Society's requirements.

## APPENDIX 2 - PERMANENT MOBILITY OF LAWYERS WITHIN CANADA

### *Law Society Rule*

(1) In this Rule:

**"pre-call training period"** means the total time which a governing body normally requires of its applicants for call and admission to article to a member and attend the Society's training program.

(2) A member of another Canadian governing body who applies to this Society for call and admission:

(a) shall satisfy this Society that the applicant meets the standards respecting good character and reputation and fitness to become a member which this Society applies to its domestic applicants, *(Amended February 24, 1995)*

(b) shall complete successfully this Society's examinations on jurisdiction-specific substantive law, practice and procedure, and

(c) where this Society's pre-call training period is longer than the pre-call training period of the applicant's home governing body, shall article to a member of this Society in this jurisdiction for a period of time equal to the difference between the two training periods, minus the applicant's post-call practice experience in the home jurisdiction.

### **Length of articling period**

(3) An articulated clerk/student shall serve under articles for a minimum period of 12 months including the Bar Admission Course.

### **Credit for articles**

(4) An articulated clerk/student who has served a period of articles in another Canadian jurisdiction may transfer credit for not more than six months articling from that other jurisdiction according to the formula that the time spent articling in the other jurisdiction will be credited as an equal amount of time spent articling in this jurisdiction, if the period of articles in the other jurisdiction is in the period immediately preceding or following the articles in this jurisdiction.

### **Exemption from Bar Admission Course**

(5) An articulated clerk/student who has completed the Bar Admission Course in another Canadian jurisdiction may be exempted by the Committee/Benchers from all or a portion of the Bar Admission Course or be required to complete a transfer course.

## APPENDIX 3 - FOREIGN LEGAL CONSULTANTS

### *Amendment to Legislation*

- (1) The Benchers may permit a person who is qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, to practise in the province the law of that country or internal jurisdiction, as the case may be, subject to any conditions, including the payment of a fee, required by the Benchers.
- (2) The provisions of this Act and the [Law Society Rules] respecting the competence, discipline and financial responsibility of members apply with the necessary changes and so far as they are applicable to a person given permission under subsection (1) to act as a foreign legal consultant in the province, but the Benchers have no power to disbar that person.

### *Law Society Rule*

#### **Foreign Legal Consultants**

- (1) In this Rule:

**"foreign legal consultant"** means a person qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, who practises in the province the law of that country or internal jurisdiction, as the case may be.

#### **Application for Permit**

- (2) A person may apply to the Society for a permit to act as a foreign legal consultant in the province by delivering to it:
  - (a) a completed permit application in a form approved by the Benchers, and
  - (b) the permit fee fixed by the Benchers.

#### **Issuance of Permit**

- (3) The Society may issue to an applicant a permit to act as a foreign legal consultant when satisfied that the applicant:
  - (a) is a member in good standing of the legal profession in his or her home country or in one of its internal jurisdictions,
  - (b) is a person of good character and repute,
  - (c) has practised the law of his or her home country or one of its internal jurisdictions for at least 3 complete years, or undertakes in writing to work, while acting as a foreign legal consultant in the province, only under the direct supervision of a foreign legal consultant from that country or internal jurisdiction who has satisfied the three-year practice requirement,

- (d) has delivered to the Society a written undertaking that he or she will:
  - (i) not accept, hold, transfer or in any other manner deal with funds which would, if accepted, held, transferred or dealt with by a member, constitute trust funds,
  - (ii) submit to the jurisdiction of the Society and will comply with the [*Legal Profession Act*], the Regulations, the Law Society Rules and the Professional Conduct Handbook, and
  - (iii) notify the Society promptly if he or she fails to complete satisfactorily whatever continuing legal education program is required of members of his or her home country or internal jurisdiction,
- (e) carries professional liability insurance or a bond, indemnity or other security:
  - (i) in a form and amount which is reasonably comparable with that maintained by the Society in its compulsory program, and
  - (ii) which specifically extends to services rendered by the foreign legal consultant while acting as such in the province,
- (f) participates in a program or carries a fidelity bond or other security satisfactory to the Society and in an amount of at least [\$\_\_\_\_\_ (to be determined by each host governing body)], for the purpose of reimbursing persons who sustain a pecuniary loss as a result of the misappropriation or wrongful conversion by the foreign legal consultant of money or other property entrusted to or received by the consultant in his or her capacity as a foreign legal consultant in the province,

and the Society may, subject to subrule (4), attach conditions to the permit.

- (4) The [Credentials] Committee may fix conditions that may be attached to permits which are issued or renewed under this Rule.
- (5) Subject to subrule (6), a permit issued under subrule (3) is valid from the issue date shown on it until the last day of the same calendar month in the next year.
- (6) Notwithstanding subrule (5), a permit ceases to be valid if the foreign legal consultant:
  - (a) is suspended as a result of proceedings under the [*Legal Profession Act*], or
  - (b) ceases to comply with any of the requirements of subrules (3) or (4).

### **Qualification to Act as a Foreign Legal Consultant**

- (7) Subject to subrule (8), a person may act as a foreign legal consultant in the province only if he or she holds a valid permit under this Rule.

### **Dual Qualification**

- (8) Subject to Appendix 4, subsection (4), a member of the Society who is also qualified to practise law in another country or in one of its internal jurisdictions need not obtain a permit to act as a foreign legal consultant in the province, provided his or her activities as a consultant are insured against in a form and amount which is at least reasonably comparable with that maintained by the Society in its compulsory program.

### **Marketing of Legal Services**

- (9) A foreign legal consultant, when engaging in advertising or any other form of marketing activity in the province:
- (a) shall use the term "foreign legal consultant",
  - (b) shall state the country or internal jurisdiction in respect of which he or she is qualified to practise law, and the professional title used in that country or internal jurisdiction, and
  - (c) shall not use any designation or make any representation from which a recipient might reasonably conclude that he or she is a member of the Society.

### **Renewal of Permit**

- (10) A foreign legal consultant who intends to continue to act as such in the province shall, before his or her permit expires, apply to the Society for a renewal of the permit.
- (11) A renewal application shall include:
- (a) a completed permit renewal application in a form approved by the Benchers,
  - (b) evidence satisfactory to the Society that the applicant continues to comply with the requirements set out in subrules (3) and (4), and
  - (c) the renewal fee fixed by the Benchers.
- (12) The Society may issue to a foreign legal consultant who has complied with the Act and these Rules a renewal permit.
- (13) Subject to subrule (14), a renewal permit issued under subrule (12) is valid for one year.
- (14) Subrule (6) applies to a permit which has been renewed under subrule (12).

## APPENDIX 4 - INTER-JURISDICTIONAL LAW FIRMS

### *Amendment to Legislation*

#### **Inter-Jurisdictional Law Firms**

(1) In this section:

**"foreign jurisdiction"** means a foreign country or, in the case of a foreign country which is a federation of internal jurisdictions in which the legal profession is regulated by the internal jurisdictions, one of its internal jurisdictions.

**"inter-jurisdictional law firm"** means a law firm:

- (a) that maintains an office in the province together with an office in a foreign jurisdiction or in another Canadian jurisdiction, or both, and
- (b) in which not all the partners, or in the case of a professional law corporation, not all the voting shareholders, are qualified to practise law in the province.

**"law firm"** means a partnership, professional law corporation of two or more voting shareholders or any other joint arrangement carrying on or holding out to the public its willingness to carry on the practice of law.

(2) An inter-jurisdictional law firm may provide legal services to the public in the province only if:

- (a) at least one partner, or in the case of a professional law corporation, at least one voting shareholder, is a member of and qualified to practise law in the province and does in fact practise law principally in the province, and
- (b) in the case of an inter-jurisdictional law firm which maintains an office in one or more foreign jurisdictions:
  - (i) it operates only in foreign jurisdictions which offer substantially the same treatment to law firms from this jurisdiction as this Society offers to inter-jurisdictional law firms, or
  - (ii) it satisfies this Society that a substantial number of important foreign jurisdictions in which that inter-jurisdictional law firm operates offers substantially the same treatment to law firms from this jurisdiction as this Society offers to inter-jurisdictional law firms.

(3) An inter-jurisdictional law firm which maintains an office in one or more foreign jurisdictions shall keep within Canada the books, records and accounts which it is required to keep with respect to its practice in the province, and shall make them available in the province on demand by the Society or its designated agent.

- (3.1) An inter-jurisdictional law firm which maintains offices only in two or more Canadian jurisdictions shall make available in the province, on demand by the Society or its designated agent, the books, records and accounts which it is required to keep with respect to its practice in the province.
- (4) A member of this Society may practise in the province as a member of an inter-jurisdictional law firm which does not comply with subsection (2), provided that the member:
  - (a) also holds a permit as a foreign legal consultant issued under Appendix 3, and
  - (b) practises only as a foreign legal consultant.
- (5) No member shall practise law in the province as a member of an inter-jurisdictional law firm unless the firm complies with the requirements of this section.
- (6) The discipline committee may, after a hearing in accordance with this Act and the [Law Society Rules], do one or more of the following:
  - (a) reprimand the firm, or
  - (b) impose a fine on the firm in an amount not exceeding \$100,000,  
where the firm or any of its lawyers
  - (c) does anything in the province or permits anything to be done in the province that would, if done by a member of the Society, constitute professional misconduct, conduct unbecoming a member of the Society, a breach of this Act or the [Law Society Rules] or incompetence, or
  - (d) fails or ceases to comply with a requirement imposed under this section.
- (7) The Benchers may make rules that they consider necessary or advisable for the purposes of this section and, without limiting the foregoing, may make rules respecting procedures for disciplinary action against an inter-jurisdictional law firm, including the adaptation, in a manner that the Benchers consider necessary or advisable, of rules respecting proceedings before the discipline committee on matters of practice and procedure before that committee.
- (8) The provisions of this Act, the rules made under this Act and the powers of the Benchers apply to inter-jurisdictional law firms permitted to provide legal services to the public under this section, with the necessary changes and so far as they are applicable.

## **APPENDIX 5 - ARBITRATION RULES**

### ***PREAMBLE***

NOTE: The Protocol should be endorsed with the following:

- A. Any dispute, controversy or claim arising out of or relating to this Protocol; or breach, termination or invalidity thereof, shall be settled by arbitration pursuant to the Federation Rules in effect on the date of giving of the notice of arbitration.
- B. The number of arbitrators shall be three, unless the parties agree on a single arbitrator.
- C. The place of arbitration shall be the home jurisdiction of the lawyer whose activity is the subject matter of the dispute (the "Home Jurisdiction").
- D. The proper law of the jurisdiction in which an arbitration under the Federation Rules takes place is the proper law applicable to the arbitration.
- E. An arbitration under the Federation Rules shall be subject to the *Arbitration Act* of the jurisdiction in which the arbitration is held, except that where that Act is inconsistent with or contrary to these Rules, these Rules shall prevail.
- F. The language(s) to be used in the arbitral proceedings shall be English or French.
- G. In selecting the arbitrators the parties must keep in mind that justice will be done only if the appointed arbitrators are neutral in all sense and have neither direct nor indirect interest in the outcome of the issue.
- H. The parties may, in a dispute involving insurance, consult with their, or their members', insurers.

### ***ARBITRATORS - APPOINTMENT PROCESS***

#### **Notice of Arbitration**

- 1.1 The party initiating arbitration (the claimant) shall give to the other party (the respondent) a written notice of arbitration.
- 1.2 Arbitral proceedings shall be deemed to commence five days after the notice of arbitration has been sent by registered mail to the respondent.
- 1.3 The notice of arbitration shall include as a minimum:

- (a) a statement that a dispute has arisen and demand that the arbitrators be selected;
- (b) the names and addresses of the parties;
- (c) a reference to the arbitration clause contained in the Protocol which is being invoked;
- (d) a reference to the specific section of the Protocol out of or in relation to which the dispute arises;
- (e) the general nature of the claim and the quantities and amounts involved, if any;
- (f) the relief or remedy sought.

### **Suggested Method - Panel of Arbitrators**

- 1.4 Each party to the arbitration shall appoint an arbitrator.
- 1.5 Within seven days of the acceptance of the appointment by the two arbitrators, they shall appoint a third arbitrator to act as chairman or umpire.

### **Appointing Authority**

- 1.6 If the parties or arbitrators are unable to agree on the name of an arbitrator or chairman, that person shall be appointed by the then President of the Federation of Law Societies of Canada on the written request of either party.

### ***THE PARTIES SHALL ...***

#### **Appoint**

- 2.1 Appoint the arbitrators in writing, signed by both parties and provide the arbitrators with a copy of the Protocol.

#### **Location**

- 2.2 State the place of the arbitration (city). Failing agreement as to the place the arbitrators will determine.

#### **Legal Actions**

- 2.3 Agree not to take any further steps in any legal actions pending between the parties.

#### **Documents**

- 2.4 Provide the arbitrators with all documents, accounts, correspondence, drawings, memoranda or any other information in writing which are in their possession or control and which relate to the matters in dispute or which the arbitrators may require.

**Legal or Other**

- 2.5 After consultation with the parties the arbitrators may appoint any legal counsel or other professional advisor to assist the arbitrators in the performance of their duties. The cost of this assistance is to be shared equally between the parties.

**Final and Binding**

- 2.6 Agree that the decision of the arbitrators shall be final and binding upon them.

**Legal Counsel or Advocate**

- 2.7 The parties may be represented or assisted by legal counsel or an advocate. Where a party intends to be so represented or assisted, he shall inform the arbitrators and the other party at the time of the appointment of the arbitrators.

***THE ARBITRATORS SHALL ...*****Bias, Conflict of Interest**

- 3.1 Disclose any potential conflict of interest or bias and not act as an arbitrator where such a conflict or bias is real or perceived.

**Agree**

- 3.2 Accept the appointment to act as an arbitrator in writing to both parties.

**Fees and Expenses**

- 3.3 State the fee to be charged, when payment(s) is due and how expenses are to be charged.
- 3.4 Advise who will be responsible for paying the fees and expenses if not already decided by the parties.
- 3.5 State the amount of the retainer fee (if any).

***PRELIMINARY MEETING*****Purpose**

- 4.1 To agree on the nature and scope of the dispute and to determine the type of process to be used.

**Time**

- 4.2 The preliminary meeting of the parties and the arbitrators shall be held within two weeks of the arbitrators' appointment.

**Matters to be Discussed**

4.3 Those matters set out in Schedule 1 and any other matters agreed to by the parties.

***BEFORE THE HEARING*****Statement of Claim**

5.1 The claimant shall file with the arbitrators a statement of claim and all relevant documents to be relied upon, in duplicate, within two weeks after the preliminary meeting.

**Reply**

5.2 The respondent shall file with the arbitrators a reply and all relevant documents to be relied upon, in duplicate, within two weeks from receipt of the statement of claim.

**Counterclaim**

5.3 A counterclaim is only admissible if it falls under the same arbitration agreement contained in the Protocol as that on which the arbitration is based, or if the same arbitration agreement is expressly or tacitly made to apply to it by the parties.

**Arbitrators' Right to Material**

5.4 The arbitrators may at any time direct that the parties produce for inspection by the arbitrators and the parties, copies of any records under the parties control which in their opinion are relevant.

**Amendment**

5.5 A party may amend a claim, a reply or a counterclaim no later than the beginning of the hearing. Thereafter amendments shall no longer be allowed except in exceptional circumstances as determined by the arbitrators.

5.6 The other party may object to an amendment if this unreasonably hinders his defence or unreasonably delays the proceedings. The arbitrators shall hear the parties and promptly decide on the objections raised.

**Agreed Statement**

5.7 The parties may wish to review with the arbitrators the statement of claim and the reply to determine if any of the issues can be resolved before the commencement of the arbitration hearing.

**Subpoena to witness**

5.8 A party to an arbitration may issue a subpoena to a witness but not for a document which the witness could not be compelled to produce in an action, and the court may order that a subpoena shall issue to compel the attendance before an arbitration of a witness.

### **Stay of proceedings**

- 5.9 Where a party to an arbitration commences legal proceedings in a court against another party in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may, before or after entering an appearance and before delivery of any pleadings or taking any other step in the proceedings, apply to that court to stay the legal proceedings.

### **Revocation of arbitrator's authority**

- 5.10 The parties may not revoke the authority of an arbitrator except by leave of the court.

### **Appointment of arbitrator by court**

- 5.11 Where an arbitrator refuses to act, is incapable of acting, dies or is removed the court may, on the application of any party, appoint an arbitrator, and an arbitrator so appointed has the same powers and duties as one appointed under these Rules.

### **Removal of arbitrator**

- 5.12 The court may, on the application of a party to an arbitration, remove an arbitrator who commits an arbitral error or who unduly delays in proceeding with the arbitration or the making of the award.

## ***HEARING***

### **Commencement**

- 6.1 The commencement of the hearing shall be within two weeks of the date of filing the reply.

### **Time and Place**

- 6.2 The time and place, in the Home Jurisdiction, of the hearing shall be as determined by the parties, or if the parties are unable to agree, by the arbitrators.

### **Privacy**

- 6.3 During the hearing no person shall be present except the arbitrators, the parties, their representatives, recording personnel and the witness giving evidence.

### **Oath**

- 6.3.1 An arbitrator may order that a witness at an arbitration testify under oath, and the arbitrator may administer the oath.

### **Presentation of Evidence**

- 6.4 The claimant shall present evidence to support its claim. Witnesses may be cross-examined. The respondent shall then present evidence supporting its reply. Witnesses may be cross-examined. Exhibits when offered by either party may be received in evidence by the arbitrators.
- 6.5 The arbitrators have the discretion to vary this procedure but shall afford a full and equal opportunity to all parties for the presentation of material and relevant evidence.

### **Witness and Advocate**

- 6.6 A representative of a party may appear as a witness and as an advocate, but if a party is represented by a lawyer or agent, that party may not be both witness and advocate.

### **Expenses - Witnesses**

- 6.7 The expenses of witnesses for either side shall be paid by the party producing such witnesses.

### **Affidavit Evidence**

- 6.8 Affidavit evidence shall be permitted by the arbitrators under exceptional circumstances.

### **Evidence in General**

- 6.9 Unless the parties have agreed otherwise the arbitrators shall be free to determine the admissibility, relevance and weight of evidence as well as the burden of proof.

### **Default**

- 6.10 If the claimant does not submit a statement within the time specified the arbitrators may dismiss the claim by making an award terminating the arbitration, unless that party offers a satisfactory explanation.
- 6.11 If the respondent does not submit a reply within the period of time specified, the arbitrators may continue the arbitration unless that party offers a satisfactory explanation, but the arbitrators shall not treat the failure of that party to submit a reply as an admission of any other party's allegations.
- 6.12 If a party fails to appear at a hearing or to produce documentary evidence, the arbitrators may continue the arbitration and make an award on the basis of the evidence before them, unless the party offers a satisfactory explanation.
- 6.13 In case of an unreasonable delay by the claimant the arbitrators may make an award terminating the arbitration, or give directions for the speedy determination of the arbitration, and may impose conditions on their decision.

**Interim Award**

6.14 The arbitrators are empowered to make an interim award if the situation or the parties require it.

**Interpret and Apply**

6.15 The arbitrators shall interpret and apply these rules insofar as they relate to the arbitrators' powers and duties. The arbitrators may rule on their own jurisdiction. When a difference arises between them it shall be decided by a majority vote.

**Waiver**

6.16 A party who knows that any provision of or requirement under these rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

**AWARD****Time of Award**

7.1 The arbitrators shall deliver their award not later than one month following the conclusion of the hearing unless the parties have agreed in writing to an extension.

**Award in Writing**

7.2 The award shall be in writing.

7.3 It shall be signed by a majority of arbitrators.

7.4 The award shall set forth:

- (a) names of the parties;
- (b) fact that arbitration was held, date, place;
- (c) reasons for the arbitrators' decisions;
- (d) result of arbitrators' findings;
- (e) any rulings of the arbitrators;
- (f) which party shall bear the costs if not previously agreed to.

**Remedy Relief**

7.5 The arbitrators may award any remedy that is just and equitable within the terms of the agreement.

### **Advance Settlement**

7.6 If the dispute is settled during arbitration, the arbitrators may if requested set out the terms of the settlement in an award.

### **Simultaneous Filing**

7.7 The arbitrators shall mail the award to both parties simultaneously.

### **Mail and Delivery**

7.8 The parties accept as delivery of the award the placing of the award in the mail addressed to such party or his lawyer as previously agreed.

### **Correction**

7.9 The arbitrators may within thirty days after making an award or at a party's request made within thirty days after receiving the award:

- (a) correct typographical errors, errors of calculation and similar errors in the award;
- (b) amend the award so as to correct an injustice caused by an oversight on the part of the arbitrators; or
- (c) make an additional award to deal with a matter in dispute that was presented in the arbitration but omitted from the earlier award.

7.10 The arbitrators need not hold a hearing or meeting before rejecting a request made under this section.

### **Third Parties**

7.11 A third party who has an interest in the outcome of the arbitral proceedings may make a written request to the arbitrators to join the proceedings or to intervene therein, and a party who claims to be indemnified by a third party shall serve a notice of joinder on such a party.

7.12 The arbitrators shall deliver a copy of the request or notice to the parties.

7.13 The request or notice may only be permitted by the arbitrators after having heard the parties and the third party and if the third party accedes to the arbitration agreement by an agreement in writing between him and the parties to the arbitration agreement contained in the Protocol. On the grant of the request for joinder or joinder for the claim for indemnity, the third party becomes a party to the arbitral proceedings.

7.14 In the case of such a request or notice the arbitrators may suspend the proceedings to determine the request or notice. After the suspension, the proceedings shall be resumed in the manner determined by the arbitrators unless the parties have determined otherwise.

7.15 The provisions regarding cost of the arbitration contained in these rules shall also apply accordingly to a third party who has joined the arbitration.

### **Arbitrator's fees**

- 7.16 The fees of an arbitrator shall not exceed the fair value of the services performed, together with necessary and reasonable expenses incurred.
- 7.17 Where an arbitrator has delivered an account for fees and expenses, any party to the arbitration or the arbitrator may apply to the district registrar or other reviewing officer of the court for an appointment to review the account.

### **Enforcement of an award**

- 7.18 On obtaining leave of the court, an award may be enforced in the same manner as a judgment or order of the court to the same effect, and judgment may be entered in the terms of the award.

### **Court may set aside award**

- 7.19 Where an award has been improperly procured or an arbitrator has committed an arbitral error, the court may set aside the award or remit the award to the arbitrator for reconsideration.

### **Appeal to the court**

- 7.20 A party to an arbitration may appeal to the court on any question of law arising out of the award where all the parties to the arbitration consent or the court grants leave to appeal.
- 7.21 In an application for leave, the court shall not grant leave except where it determines that:
- (a) the importance of the result of the arbitration to the parties justifies the intervention of the court and the determination of the point of law may prevent a miscarriage of justice,
  - (b) the point of law is of importance to some class or body of persons of which the applicant is a member, or
  - (c) the point of law is of general or public importance.
- 7.22 On an appeal the court may:
- (a) confirm, vary or set aside the award, or
  - (b) remit the award to the arbitrator together with the court's opinion on the question of law that was the subject of the appeal.

### **Application to court to determine question of law**

- 7.23 The court may, on the application of a party, determine any question of law that arises during the course of an arbitration where that party either obtains the consent of the arbitrator or of the other parties to the arbitration.

**Amendment of Rules**

- 7.24 The Federation of Law Societies of Canada may at any time amend these rules. Such amendments shall have no effect on arbitrations that have already commenced.
- 7.25 The rules in effect at the time that an arbitration is commenced shall apply to that arbitration.
- 7.26 The parties to a dispute to which these rules apply may modify, vary or amend these rules by agreement.

## ARBITRATION RULES

### Schedule 1

The following is a list of matters that might be discussed at the preliminary meeting:

- (a) nature and scope of the dispute;
- (b) lawyers to represent - exchange names;
- (c) the applicable rules of arbitration;
- (d) on-site inspections;
- (e) arbitrators' powers - interim relief, protection of evidence;
- (f) likely number of witnesses, who notifies, sequestering;
- (g) arbitrators' fees and expenses (if not decided);
- (h) responsibility for fees and expenses (if not decided);
- (i) should a stenographic record or any other type of record of the proceedings be kept. Cost should be clearly noted;
- (j) interpreters, translation, security measures;
- (k) location of hearing and room rental;
- (l) means of communication to be used - copies to both parties, mailing addresses, dates of delivery;
- (m) restrictions on communication - arbitrators will make rules and inform parties.

#### **Documents Only**

The parties may agree to submit documents to the arbitrators and dispense with a hearing involving witnesses.

## APPENDIX 6 - UNIFORM GUIDELINES FOR THE PAYMENT OF INTER-PROVINCIAL DEFALCATION CLAIMS

The following guidelines apply to claims for compensation made under paragraph 10 of this Protocol:

### Definitions

1. In these guidelines:

**"home governing body"** means a governing body of the legal profession in Canada of which a lawyer is a member and includes, in the case of a lawyer who is a member of two or more signatories, the governing body of the province or territory in which the lawyer principally practises law, and **"home jurisdiction"** has a corresponding meaning.

### Inter-provincial practice of law

2. A claim arises during the inter-provincial practice of law only if both the following criteria are met:
  - a. it arises as a result of a lawyer practising temporarily in a host jurisdiction, and
  - b. the claimant does not, at the time of the misappropriation, reside or, in the case of a corporation, principally operate, in the lawyer's home jurisdiction.

### National Excess Plan

3. The Federation shall establish, maintain and administer a National Excess Plan ("Plan") for the purpose of compensating claimants who sustain a financial loss arising from the misappropriation of monies or property by a lawyer while engaged in the inter-provincial practice of law.
4. Each signatory shall annually contribute to the Plan an assessment of \$2 times the number of its members, commencing in 1997 and payable by September 30 of each year: *(Amended March 2, 1996)*
  - a. until the Plan reaches \$1 million, and
  - b. when necessary to replenish the Plan to \$1 million,

provided that a signatory's total liability under this paragraph in any calendar year shall not exceed \$2 times the number of its members.
5. The number of a signatory's members used in calculating that signatory's annual assessment to the Federation of Law Societies shall be the number of that signatory's members used to determine its contribution under paragraph 4 for the same calendar year.

### **Claim against lawyer's liability insurance policy**

6. Where a claimant alleges to have sustained a financial loss arising from the misappropriation of monies or property by a lawyer while engaged in the inter-provincial practice of law, the home governing body shall, except where the lawyer is a sole practitioner, advise the claimant:
  - a. of the "innocent insured" coverage in the lawyer's compulsory liability insurance policy, and
  - b. that a person who is eligible for an indemnity payment under the lawyer's compulsory professional liability insurance policy is not eligible for compensation under this Appendix, except for any unpaid deductible amount under that policy.

### **Primary claim against home governing body**

7. A claimant may apply for compensation from the home governing body.
8. In paragraph 7, "claimant" does not include a person who is eligible for an indemnity payment under the lawyer's compulsory professional liability insurance policy, except for any unpaid deductible amount under that policy.
9. In processing an application made under paragraph 7 the home governing body shall, in consultation with the host governing body, determine:
  - a. whether the host governing body would have statutory jurisdiction under its legislation to consider the claim, and
  - b. if it would have jurisdiction, the amount if any that it would compensate the claimant, had the claim arisen during the domestic practice of one of its members.
10. The amount determined under subparagraph 9(b):
  - a. shall take into account any compensation received by the claimant from the lawyer or from any other person, and
  - b. shall not exceed the amount in the host governing body's domestic compensation fund at the time the determination is made.
11. Where a claimant would have been compensated by the host governing body under subparagraph 9(b), the home governing body shall compensate the claimant in an amount equal to the lesser of that amount and \$50,000, subject to the per member aggregate, if any, of the home governing body's domestic compensation program.

### **Claims against the National Excess Plan**

12. A claimant who receives less from the home governing body under paragraph 11 than the claimant would have received from the host governing body under subparagraph 9(b) may apply to the National Excess Plan for further compensation.

13. An application for compensation from the Plan shall be made in writing, delivered to the Executive Director of the Federation of Law Societies.
14. The date of an application for compensation is the date that the application is received by the Federation of Law Societies.
15. Subject to paragraph 16, no compensation shall be paid respecting a claim during the calendar year in which it is received by the Federation.
16. The Directors of the Federation or a person designated by them for that purpose may, to relieve against hardship in exceptional circumstances, award compensation to a claimant during the year in which the application is received, in an amount not exceeding the limits specified in paragraph 18 which the Directors or their designate consider appropriate.
17. In each January the Directors of the Federation or a person delegated by them for that purpose shall award compensation from the Plan for claims received during the previous calendar year.
18. The National Excess Plan shall compensate a claimant, who has applied under paragraph 12, in an amount equal to the lesser of:
  - a. the amount which the claimant would have received from the host governing body under subparagraph 9(b) minus the amount received from the home governing body under paragraph 11, and
  - b. the least of:
    - i. \$450,000,
    - ii. the amount in the National Excess Plan at the time payment is made, and
    - iii. the claimant's pro rata entitlement calculated under paragraph 19.
19. Where the total amount of all claims against the National Excess Plan for the year exceeds the amount in the Plan, the claims shall be compensated on a pro rata basis and, if following the pro rata calculation the amount owing to a claimant exceeds the National Excess Plan's liability under paragraph 18, the amount in excess of that liability shall be deducted from that claim and shall be distributed on a pro rata basis, as necessary, among the other claimants whose pro rated claims do not exceed that liability.

### **Secondary claim against home governing body**

20. A claimant who receives less in total from the home governing body under paragraph 11 and from the National Excess Plan under paragraph 18 than the claimant would have received from the host governing body under subparagraph 9(b) may apply to the home governing body for further compensation.
21. The home governing body shall further compensate a claimant, who has applied under paragraph 20, in an amount equal to the lesser of:

- a. the amount needed to bring the claimant's total compensation under paragraph 11, paragraph 18 and this paragraph up to the amount which the host governing body would have compensated under subparagraph 9(b), and
- b. the amount needed to bring the home governing body's total contribution under paragraph 11 and this paragraph up to the amount, if any, that it would compensate the claimant, had the claim arisen during its member's domestic practice, subject to its per member aggregate, if any.

END