

Information

Temporary Practice in BC

Canadian lawyers who wish to practise law in BC on an occasional basis will wish to review the provisions that govern temporary practice. For information on transferring permanently to the British Columbia, see the information sheet *Transfers*.

BC lawyers seeking to practise elsewhere in the country, either temporarily or permanently, should consult the law society in the jurisdiction in which they wish to practise. The requirements may differ, depending on whether or not the other jurisdiction is a signatory to the National Mobility Agreement and has implemented rules under that agreement.

Can lawyers from other provinces practise law in British Columbia?

All Canadian law societies have provisions to allow the inter-jurisdictional practice of lawyers. This includes provisions for:

- **temporary practice:** a lawyer called to the bar in one Canadian province or territory may provide legal services temporarily in or with respect to the law of another province or territory; and
- **transfer:** a lawyer called to the bar in one province or territory may be called to the bar of another province or territory: see the information sheet *Transfers*.
- In BC, the rules addressing temporary inter-jurisdictional practice are based on agreements negotiated among members of the Federation of Law Societies of Canada. The Law Society of BC is a signatory to those agreements, which are:
 - the Inter-Jurisdictional Practice Protocol (signed 1994; Rules approved in British Columbia in 1999); and
 - the National Mobility Agreement (signed December, 2002; Rules approved in British Columbia in May, 2003 and in effect July 1, 2003).

What rules govern temporary practice in BC?

The main provisions dealing with temporary practice in British Columbia are Law Society Rules 2-15 to 2-27. These rules spell out different provisions depending on what jurisdiction the visiting lawyer is from.

Certain rules apply only to visiting lawyers who are "entitled to practise law" in a reciprocating jurisdiction. A *reciprocating jurisdiction* is one that has signed the National Mobility Agreement and adopted regulatory provisions giving effect to the requirements of the agreement. At present, the reciprocating jurisdictions are **British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Nova Scotia, Newfoundland, New Brunswick and Prince Edward Island.**

The Barreau du Quebec has also signed the agreement, but has not yet adopted rules to implement it.

The following jurisdictions **have not signed** the National Mobility Agreement: the Chambre des Notaires in Quebec and the three territories Nunavut, Northwest Territories and Yukon.

Because the National Mobility Agreement is a reciprocal agreement, for a lawyer to benefit from the provisions of the agreement, both the lawyer's home law society and the law society in the jurisdiction in which the lawyer wishes to practise must both have signed and implemented the agreement. If one of the jurisdictions is non-reciprocating, different rules apply.

What are the criteria to practise temporarily in BC?

You may be eligible to practise temporarily in BC, with or without a permit.

Law Society Rule 2-16 governs who may practise temporarily in BC without a permit. If you are a visiting lawyer who is entitled to practise law in a reciprocating jurisdiction, you may be eligible to practise in BC without a permit for up to 100 business days in any calendar year. If you are a visiting lawyer from a non-reciprocating jurisdiction, you may be eligible to practise in BC without a permit on up to 10 legal matters and for up to 20 business days in total during any 12-month period.

To be eligible to practise temporarily in BC without a permit under Rule 2-16, you must:

- be entitled to practise law in a province or territory of Canada outside of BC;
- carry professional liability insurance that is comparable in coverage and limits to that required of BC lawyers under Rule 3-39(1), and that extends to your temporary practice in BC;
- have defalcation compensation coverage from a governing body that extends to your temporary practice in BC;
- not be subject to conditions or restrictions on your practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity;
- not be the subject of criminal or disciplinary proceedings in any jurisdiction;
- have no disciplinary record in any jurisdiction; and
- not have established an economic nexus with British Columbia, as defined by Rule 2-17.

- If you are ineligible for mobility under these provisions, you must apply for an inter-jurisdictional practice permit under Rule 2-19 to practise law temporarily in BC. See below for details on how you can make this application.

What does "entitled to practise law" mean?

Some provinces and territories use the term "entitled to practise law." Others may use "authorized to practise." In both cases, this means that as a prerequisite to being eligible to practise law temporarily in BC, you must first meet the requirements of your home law society to be entitled or authorized to practise law.

For example, if you are required to have insurance in your home jurisdiction to be considered entitled to practise, and you do not currently have insurance, you are not entitled to practise law in BC on a temporary basis under Rule 2-16. If you wish to take advantage of this rule in BC, you must become entitled (authorized) to practise in your home jurisdiction.

How long may I practise in BC on a temporary basis?

If you are a lawyer from a reciprocating jurisdiction who is eligible to practise without a permit, you may practise law in BC on an occasional basis for not more than 100 business days in a calendar year.

"Business day" is defined to include a weekend day, a statutory holiday and any part of a day. The onus is on you to keep a record of the days on which you practise law on an occasional basis in BC, or with respect to the law of BC. The Law 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 BC.

Is it possible to extend the 100 days?

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

What activities constitute practising law in British Columbia?

For the purposes of Rule 2-16, you will be considered to be providing legal services in BC if:

- you perform professional services for others as a barrister or solicitor with respect to or relying on the laws of BC or the laws of Canada applicable to BC; or
- you give legal advice with respect to the laws of BC or the laws of Canada applicable to BC.

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

It also means that you are providing legal services in BC if you do so with respect to the laws of Canada applicable to BC. For example, lawyers employed by the Government of Canada who perform professional services as barristers or solicitors or give legal advice with respect to or relying on the laws

of Canada applicable to BC are subject to Rule 2-16. So are lawyers who practise law on an occasional basis for a single employer (corporate counsel).

You will not be considered to be practising law in BC for the purposes of the Law Society 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 counsel in a proceeding in:

- the Supreme Court of Canada;
- the Federal Court of Canada;
- the Tax Court of Canada;
- a federal administrative tribunal;
- a service tribunal within the meaning of the National Defence Act (Canada); or
- the Court Martial Appeal Court of Canada.

Time spent preparing for the court or tribunal appearance, or otherwise furthering the matter, also need not be counted.

What does it mean to establish an economic nexus with BC?

An economic nexus with BC is established if, when practising law on an occasional basis in BC, you do something that is inconsistent with practising law only on an occasional basis: see Rule 2-17. If this kind of connection is established, you must cease practising law in BC immediately, but you may apply to become a member of the Law Society of BC (see the information sheet *Transfers*).

For example, you would establish an economic nexus with BC by any of the following:

- practising law in BC for more than the maximum number of days permitted under Rule 2-16;
- opening an office in BC from which to practise law;
- opening or operating a trust account at a financial institution located in BC;
- receiving money in trust for client, other than as set out in Rule 2-25;
- holding yourself out as willing to accept new clients in BC;
- becoming resident in BC; or
- otherwise acting in any manner inconsistent with practising law in BC only on an occasional basis.

What happens if I establish an economic nexus with BC?

You are no longer eligible to practise law on an occasional basis in BC and must cease doing so immediately. You may, however, apply to become a member of the Law Society of BC (see the information sheet *Transfers*), or for an inter-jurisdictional practice permit (see below).

I work in a law firm with offices throughout the country. Do I establish an economic nexus with BC by practising law in our BC office?

The Rules provide that you do not establish an economic nexus by 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: see Law Society Rule 2-17(3).

How do I apply for an inter-jurisdictional practice permit?

A visiting lawyer who does not qualify to practise law temporarily in BC without a permit under Rule 2-16 or is disqualified under Rule 2-17 may apply for an inter-jurisdictional practice permit: see Law Society Rule 2-19.

To apply for an inter-jurisdictional practice permit, you must submit to the Law Society:

- Application for Inter-Jurisdictional Practice Permit;
- an original certificate of standing (long form) from each law society of which you are a member, issued within the previous 30 days;
- a certificate of insurance from your home law society as proof that you carry professional liability insurance that specifically extends to your temporary practice in BC; and
- the permit application fee of \$525 (\$500 plus GST). (This fee applies if you are from a jurisdiction that charges a fee to BC lawyers for the equivalent of an inter-jurisdictional practice permit.)

If you are a member of a law society that does not charge a fee to BC lawyers for the equivalent permit, you are not required to remit any fee. Please contact your home law society to determine whether it waives fees for BC lawyers on a reciprocal basis.

The Credentials Committee has denied permits when the applicant has a serious discipline record or is the subject of an outstanding complaint in which the circumstances of the complaint may lead the applicant's law society to initiate disciplinary proceedings against him or her. This policy is also reflected in the Federation of Law Societies Inter-Jurisdictional Practice Protocol (February 18, 1994) on temporary mobility:

- (4) To engage in the practice of law in this province, a lawyer shall . . . comply with whichever of the following are applicable:
 - (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. . .

How long is a permit valid?

If an inter-jurisdictional practice permit is granted, it is valid for one year from the date it was issued. There is an exception for a visiting lawyer who is not from a reciprocating jurisdiction; in that case, the permit expires on the completion of the legal matter for which the permit was granted.

The permit extends to appearances on the same action or information number throughout, including appeals.

A permit ceases to be valid if the permit holder:

- is not a practising member in good standing of a governing body;
- fails to maintain professional liability insurance coverage; or
- is suspended or disbarred by any governing body.

How can I renew a permit?

Prior to the expiry of the permit, permit holders may apply to the Law Society for a one-year renewal of the permit at a cost of \$105 (\$100 plus GST) by submitting the same documents as on the initial application.

While I am practising law in BC on an occasional basis, may I receive money in trust for a client?

If you are permitted to practise law in BC on an occasional basis, you may receive money in trust for a client provided that you pay the money into a trust account at a financial institution located in the province or territory in which you are a member and authorized to practise law. Alternatively, you may pay the money into a trust account that is kept in the name of and operated by a member of the Law Society of BC in accordance with Rule 2-25.

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 BC except in accordance with the rules governing temporary practice. Any communications, including letterhead, business cards or marketing efforts, must conform to this restriction. You can comply by clearly identifying the governing body or bodies in which you are authorized to practise law.

How will third parties know I have the right to practise law on an occasional basis?

A third party wishing to make enquiries about a lawyer from another province or territory who is providing legal services in BC can, as a first step, contact the Law Society of BC.

Law societies in Canada that are signatories to the National Mobility Agreement have access to a national registry of lawyers and can respond to basic information requests about visiting lawyers from other provinces. For example, if a member of the public in BC were to enquire about a visiting lawyer

from Alberta, the Law Society of BC can consult the database in order to confirm the lawyer's name and his or her practice address, call date and insurance status in Alberta. To obtain further information about the lawyer, the person making the enquiry would need to contact the Law Society of Alberta directly.

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

While practising law in BC on an occasional basis, am I subject to the *Code of Professional Conduct for BC*?

The *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct for BC* all apply to you, with necessary modifications.

While I am practising law in BC on an occasional basis, may I commission affidavits?

Lawyers from other jurisdictions visiting BC may not take affidavits in BC for use in BC. The BC *Evidence Act*, s. 60 states: "The following persons are, because of their office or employment, commissioners for taking affidavits for British Columbia...

- (d) practising lawyers as defined in section 1(1) of the *Legal Profession Act*;
- (e) notaries public."

Since s. 1 of the *Legal Profession Act* defines "practising lawyer" as "a member [of the Law Society of BC] in good standing who holds or is entitled to hold a practising certificate," and since only a "practising lawyer" may exercise the power of a notary public, it is apparent that visiting lawyers may not take oaths in BC for use in BC.

[A BC lawyer, as a commissioner for taking affidavits for British Columbia, has the authority to administer oaths and take affidavits, declarations and affirmations outside of BC for use in BC (see s. 59 and related sections of the BC *Evidence Act*).]

While I am practising law in BC on an occasional basis, am I authorized to give an undertaking to a BC lawyer?

Yes, in accordance with the *Code of Professional Conduct for BC*.

If an allegation of misconduct, incompetence or incapacity is made against me with respect to my temporary practice of law in BC, what law society governs the matter?

The law society of the governing body of which you are a member will usually take jurisdiction over the matter, in consultation and cooperation with the Law Society of BC. The Law Society of BC may take jurisdiction if the law society of which you are a member agrees. The primary considerations in making such a decision will be public interest, convenience and cost.

How can I obtain more information?

If you have questions regarding temporary practice in BC, please contact:

Registration & Licensee Services
604.605.5311 | f 604.687.0135
Email registration@lsbc.org

The information in this package is based on the Law Society Rules as they exist at this time. You must comply with the Rules that are in effect at the time you apply for an inter-jurisdictional practice permit and with any changes in the Rules that may occur while you are in the process of applying. If you have any questions about temporary practice in BC, contact Registration & Licensee Services at the Law Society of British Columbia.

Law Society Rules 2015

Inter-jurisdictional practice without a permit

- 2-16** (1) Subject to the other requirements of this rule, a visiting lawyer may provide legal services without a permit
- (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days in any calendar year, or
 - (b) in all other cases, on not more than 10 legal matters and for not more than 20 business days in total during any 12-month period.
- (2) A visiting lawyer must not hold himself or herself out or allow himself or herself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.
- (3) Subject to subrule (4), to qualify to provide legal services on a temporary basis under this rule, a visiting lawyer must at all times
- (a) carry professional liability insurance that
 - (i) is reasonably comparable in coverage and limits to that required of lawyers under Rule 3-39 (1) [*Compulsory liability insurance*], and
 - (ii) extends to the visiting lawyer's temporary practice in British Columbia,
 - (b) have defalcation compensation coverage from a governing body that extends to the visiting lawyer's temporary practice in British Columbia,
 - (c) not be subject to conditions of or restrictions on the visiting lawyer's practice or membership in the governing body in any jurisdiction imposed as a result of or in connection with proceedings related to discipline, competency or capacity,
 - (d) not be the subject of criminal or disciplinary proceedings in any jurisdiction,
 - (e) have no disciplinary record in any jurisdiction, and
 - (f) not establish an economic nexus with British Columbia, contrary to Rule 2-17 [*Disqualifications*].
- (4) On application of a visiting lawyer who otherwise qualifies under subrule (3), the Executive Director may allow the visiting lawyer to provide legal services without a permit beyond the limits set in subrule (1).
- (5) At the written request of a visiting lawyer affected by a decision made by the Executive Director under subrule (4), the Credentials Committee may
- (a) confirm the decision, or
 - (b) substitute its decision.
- (6) The requirement in subrule (3) (a) does not apply to a visiting lawyer who is exempt from compulsory liability insurance under Rule 3-43 [*Exemption from liability insurance*] with respect to legal services to be provided in British Columbia.
- (7) A visiting lawyer who provides legal services without a permit must, on request,
- (a) provide evidence to the Executive Director that the visiting lawyer has complied with and continues to comply with this rule, and

- (b) disclose to the Executive Director each governing body of which the visiting lawyer is a member.
- (8) Notwithstanding Rules 2-15 to 2-27, a member of the Canadian Forces who is entitled to practise law in a home jurisdiction in which he or she is a member of the governing body
 - (a) may provide legal services for or on behalf of the Office of the Judge Advocate General without a permit, and
 - (b) does not establish an economic nexus with British Columbia under Rule 2-17 [*Disqualifications*], provided that he or she provides legal services exclusively for or on behalf of the Office of the Judge Advocate General.

Disqualifications

- 2-17** (1) A visiting lawyer who has established an economic nexus with British Columbia is not permitted to provide legal services without a permit under Rule 2-16 [*Inter-jurisdictional practice without a permit*].
- (2) For the purposes of this rule, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services, including but not limited to doing any of the following in British Columbia:
- (a) providing legal services beyond 100 business days, or longer period allowed under Rule 2-16 (4) [*Inter-jurisdictional practice without a permit*];
 - (b) opening an office from which legal services are offered or provided to the public;
 - (c) becoming resident;
 - (d) opening or operating a trust account, or accepting trust funds, except as allowed under Rule 2-25 [*Trust funds*];
 - (e) holding oneself out or allowing oneself to be held out as willing or qualified to provide legal services, except as a visiting lawyer.
- (3) A visiting lawyer who provides legal services in or from an office affiliated with the visiting lawyer's law firm in his or her home jurisdiction does not, for that reason alone, establish an economic nexus with British Columbia.
- (4) A visiting lawyer who becomes disqualified under this rule must cease providing legal services forthwith, but may apply under Rule 2-19 [*Inter-jurisdictional practice permit*] for an inter-jurisdictional practice permit or under Rule 2-79 [*Transfer from another Canadian jurisdiction*] for call and admission.
- (5) On application by a visiting lawyer, the Executive Director may allow the visiting lawyer to continue to provide legal services pending consideration of an application under Rule 2-19 [*Inter-jurisdictional practice permit*] or 2-79 [*Transfer from another Canadian jurisdiction*].

Federal jurisdiction

- 2-18** (1) Despite Rule 2-16 [*Inter-jurisdictional practice without a permit*], a visiting lawyer who is not disqualified under Rule 2-17 (2) (b) to (e) [*Disqualifications*] may appear before any of the following tribunals without a permit:
- (a) the Supreme Court of Canada;

- (b) the Federal Court of Appeal;
 - (c) the Federal Court;
 - (d) the Tax Court of Canada;
 - (e) a federal administrative tribunal;
 - (f) service tribunals as defined in the *National Defence Act*;
 - (g) the Court Martial Appeal Court of Canada.
- (2) Subrule (1) applies when a visiting lawyer is preparing for an appearance allowed under that subrule and otherwise furthering the matter giving rise to the appearance.

Inter-jurisdictional practice permit

- 2-19** (1) A visiting lawyer who does not qualify to provide legal services without a permit under Rule 2-16 [*Inter-jurisdictional practice without a permit*] or is disqualified under Rule 2-17 [*Disqualification*] may apply for a permit.
- (2) A permit allows a visiting lawyer to provide legal services as follows:
- (a) in the case of a visiting lawyer who is entitled to practise law in the jurisdiction of a reciprocating governing body of which the visiting lawyer is a member, for a maximum of 100 business days;
 - (b) in all other cases, for a specific legal matter.
- (3) A visiting lawyer applying under subrule (1) must deliver to the Executive Director
- (a) a completed permit application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
 - (b) the application fee or renewal fee specified in Schedule 1,
 - (c) certificates of standing dated not more than 30 days before the date of application and in a form acceptable to the Credentials Committee, issued by each governing body of which the visiting lawyer is a member,
 - (d) proof of professional liability insurance as required under Rule 2-16 (3) (a) [*Inter-jurisdictional practice without a permit*], and
 - (e) proof that the visiting lawyer has the defalcation coverage required under Rule 2-16 (3) (b) [*Inter-jurisdictional practice without a permit*].
- (4) Subrule (3) (b) does not apply to an application made by a visiting lawyer who is a member of a governing body in a jurisdiction in which
- (a) the visiting lawyer is entitled to practise law, and
 - (b) the governing body does not charge members of the Society a fee for the equivalent of a permit.

Application for inter-jurisdictional practice permit

- 2-20** (1) On receipt of an application for a permit, the Executive Director must
- (a) issue or renew the permit, or
 - (b) refer the application to the Credentials Committee.

- (2) If the Executive Director refers an application to the Credentials Committee under subrule (1), the Committee must
 - (a) issue or renew a permit, subject to any conditions or limitations the Committee may direct, or
 - (b) reject the application.
- (3) If the Credentials Committee rejects an application, the Committee must, at the written request of the person applying under Rule 2-19 (1) [*Inter-jurisdictional practice permit*], give written reasons for the decision.

Legal Profession Act

Interprovincial practice

- 16** (1) In this section, "governing body" means the governing body of the legal profession in another province or a territory of Canada.
- (2) The benchers may permit qualified lawyers of other Canadian jurisdictions to practise law in British Columbia and may promote cooperation with the governing bodies of the legal profession in other Canadian jurisdictions by doing one or more of the following:
 - (a) permitting a lawyer or class of lawyers of another province or a territory of Canada to practise law in British Columbia;
 - (b) attaching conditions or limitations to a permission granted under paragraph (a);
 - (c) submitting disputes concerning the interjurisdictional practice of law to an independent adjudicator under an arbitration program established by agreement with one or more governing bodies;
 - (d) participating with one or more governing bodies in establishing and operating a fund to compensate members of the public for misappropriation or wrongful conversion by lawyers practising outside their home jurisdictions;
 - (e) making rules
 - (i) establishing conditions under which permission may be granted under paragraph (a), including payment of a fee,
 - (ii) respecting the enforcement of a fine imposed by a governing body, and
 - (iii) allowing release of information about a lawyer to a governing body, including information about practice restrictions, complaints, competency and discipline.
 - (3) Parts 3 to 8 and 10 apply to a lawyer or class of lawyers given permission under this section.