

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Quebec Mobility Agreement

**Addendum to Extend Mobility Rights to Members
of the Chambre des notaires du Québec**

FEDERATION OF LAW SOCIETIES OF CANADA

(Date)
(Place)

Introduction

The purpose of this Agreement is to extend the scope of the Quebec Mobility Agreement (the "QMA") in order to facilitate permanent mobility between the Chambre des notaires du Québec (the "Chambre") and law societies in common law jurisdictions, thereby completing the national mobility regime for all members of the Federation of Law Societies of Canada (the "Federation") and both branches of Quebec's legal profession.

Pursuant to the QMA, the Barreau du Québec (the "Barreau") and the provincial and territorial law societies in common law jurisdictions have entered into an arrangement under which members of the Barreau may become members of the other law societies and practise federal and Quebec law as Canadian Legal Advisors. Accordingly, the QMA establishes mobility rights for members of the Barreau in the same manner as those that have been established by the Barreau for members of the other law societies, thereby meeting the reciprocity requirements set out in the National Mobility Agreement (the "NMA").

It is the intention of the signatories to this Agreement that the provincial and territorial law societies in common law jurisdictions implement provisions that will permit members of the Chambre to become members of such law societies and practise federal and Quebec law in those jurisdictions within the scope set out in this Agreement.

The signatories recognize that,

- they have a duty to the Canadian public and to their members to regulate the inter-jurisdictional practice of law so as to ensure that their members practise law competently, ethically and with financial responsibility, including professional liability insurance and defalcation compensation coverage, in all jurisdictions of Canada,
- differences exist in the legislation, policies and programs pertaining to the signatories, particularly between common law and civil jurisdictions, and
- it is desirable to facilitate a nationwide regulatory regime for the inter-jurisdictional practice of law to promote uniform standards and procedures,

while recognizing the exclusive authority of each signatory within its own legislative jurisdiction.

Background

In August 2002 the Federation accepted the report of the National Mobility Task Force for the implementation of full mobility rights for Canadian lawyers.

Eight law societies, including the Barreau, signed the NMA on December 9, 2002. The NMA recognized that special circumstances applicable to the Barreau would necessitate additional provisions to implement mobility between the Barreau and the common law jurisdictions. The signatories also recognized that the requirement for the Barreau to comply with regulations applicable to all professions in Quebec would delay implementation of the NMA with respect to the Barreau. The Chambre is not a signatory to the NMA.

In 2006, the law societies of all 10 provinces, including the Barreau, signed the Territorial Mobility Agreement (the "TMA"), along with the law societies of all three territories. The Chambre is not a signatory to the TMA. Under that agreement, provisions were mandated for reciprocal permanent mobility between the law societies of the territories and the provinces, for a five-year period ending January 1, 2012.

Quebec Mobility

In June 2008, the Government of Quebec enacted a "Regulation respecting the issuance of special permits of the Barreau du Québec", which is stated to be "made in order to facilitate the mobility of advocates." The Regulation provides, *inter alia*, that a member in good standing of a bar of another Canadian province or territory may apply for a "special Canadian legal advisor permit" in Quebec. A person granted such a permit may engage in the following activities on behalf of another person:

- (1) give legal advice and consultations on legal matters involving the law of the Canadian province or territory where he or she is legally authorized to practise law or involving matters under federal jurisdiction;
- (2) prepare and draw up a notice, motion, proceeding or other similar document intended for use in a case before the courts, but only with respect to matters under federal jurisdiction;
- (3) give legal advice and consultations on legal matters involving public international law; and
- (4) plead or act before any tribunal, but only with respect to matters under federal jurisdiction.

In March 2010, recognizing the provisions of the Quebec Regulation, the common law governing bodies entered into the QMA with the Barreau to enable its members to exercise mobility in the common law jurisdictions on a reciprocal basis. It was recognized that members of other governing bodies will not be able to exercise the reciprocal right to practise public international law unless they have professional liability insurance coverage that specifically includes such practice.

Recognizing that Quebec's legal system is founded on the French civil law system and its institutions which are reflected in the division of the legal profession in Quebec between advocates, who are members of and are governed by the Barreau, and notaries, who are members of and are governed by the Chambre, it is desirable that mobility rights be extended to members of the Chambre on the basis set out in this Agreement.

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

1. In this Agreement, unless the context indicates otherwise:

"Advisor" means a Canadian Legal Advisor;

"Canadian Legal Advisor" means a member of the Chambre who holds a current Canadian Legal Advisor certificate issued by a common law governing body;

"Chambre" means the Chambre des notaires du Québec;

"common law governing body" means the Law Society or Barristers' Society in a Canadian common law jurisdiction;

"liability insurance" means compulsory professional liability errors and omissions insurance required by the Chambre; and

"Quebec notary" means a member of the Chambre.

General

2. The signatory common law governing bodies and the Chambre will

- (a) use their best efforts to obtain from the appropriate legislative or supervisory bodies amendments to their legislation or regulations necessary or advisable in order to implement the provisions of this Agreement;

- (b) amend their own rules, by-laws, policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;
 - (c) comply with the spirit and intent of this Agreement to facilitate mobility of Quebec notaries in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
 - (d) work cooperatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory common law governing bodies and the Chambre will subscribe to this Agreement and be bound by means of the signature of an authorized person affixed to any copy of this Agreement.
 4. A signatory common law governing body will not, by reason of this agreement alone,
 - (a) grant to a Quebec notary greater rights to provide legal services than are permitted to the Quebec notary by the Chambre; or
 - (b) relieve a Quebec notary of restrictions or limits on the Quebec notary's right to practise, except under conditions that apply to all members of the signatory common law governing body.

Canadian Legal Advisor

5. Signatory common law governing bodies will establish and maintain a program in order to issue Canadian Legal Advisor certificates to qualifying members of the Chambre.
6. Members of the Chambre whose legal training was obtained outside Canada and who have not had their credentials reviewed and accepted as equivalent by the Chambre are not qualifying members of the Chambre for the purpose of clause 5.
7. A member of the Chambre who is granted the status of Advisor in any jurisdiction outside of Quebec, may, in his or her capacity as Advisor:
 - (a) give legal advice and consultations on legal matters involving the law of Quebec or involving matters under federal jurisdiction;
 - (b) prepare and draw up a notice, motion, proceeding or similar document intended for use in a case before a judicial or quasi-judicial body in a

matter under federal jurisdiction where expressly permitted by federal statute or regulations;

- (c) give legal advice and consultations on legal matters involving public international law; and
 - (d) plead or act before a judicial or quasi-judicial body in a matter under federal jurisdiction where expressly permitted by federal statute or regulations.
8. A signatory common law governing body will require no further qualifications for a Quebec notary to be eligible for membership as Advisor than the following:
- (a) entitlement to practice the notarial profession in Quebec; and
 - (b) good character and fitness to be a member of the legal profession, on the standard ordinarily applied to applicants for membership.
9. Before admitting as a member a Quebec notary qualified under clause 8, a signatory common law governing body will not require the Quebec notary to pass a transfer examination or other examination, but may require the Quebec notary to do all of the following:
- (a) provide certificates of standing from all Canadian and foreign governing bodies of the legal profession of which the Quebec notary is or has been a member;
 - (b) disclose criminal and disciplinary records in any jurisdiction; and
 - (c) consent to access by the governing body to the Quebec notary's regulatory files of all governing bodies of the legal profession of which the Quebec notary is a member, whether in Canada or elsewhere.
10. A signatory common law governing body will make available to the public information obtained under clause 9 in the same manner as similar records originating in its jurisdiction.
11. A signatory common law governing body must require that a member of the Chambre who is granted the status of a Canadian Legal Advisor continue to maintain his or her practising membership in the Chambre.

Liability Insurance

12. The Chambre will continue to make available to its members who are also Advisors in another jurisdiction ongoing liability insurance with minimum occurrence or claim limits for indemnity of \$1,000,000 and \$2,000,000 annual per member aggregate.

Transition Provisions

13. This agreement is a multi-lateral agreement, effective respecting the common law governing bodies that are signatories and the Chambre, and it does not require unanimous agreement of common law governing bodies and the Chambre.
14. Nothing in this Agreement is intended to affect the obligations of any party under the provisions of the NMA, the QMA or other agreements in effect.

Dispute Resolution

15. Signatory common law governing bodies and the Chambre adopt and agree to apply provisions in the Inter-Jurisdictional Practice Protocol in respect of arbitration of disputes, specifically Clause 14 and Appendix 5 of the Protocol.

Withdrawal

16. A signatory common law governing body or the Chambre may cease to be bound by this agreement by giving each other party written notice of at least one clear calendar year.
17. A party that gives notice under clause 16 will immediately notify its members in writing of the effective date of withdrawal.