

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Mobility Defalcation Compensation Agreement

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FEDERATION OF LAW SOCIETIES OF CANADA

May 2010
Ottawa, Ontario

Background

Since the adoption of the Inter-Jurisdictional Practice Protocol by several law societies in 1994, and especially since the adoption of the National Mobility Agreement in 2002, most Canadian lawyers have had the ability to practise law on a temporary basis and subject to limited restrictions in almost all of the jurisdictions of Canada. While this can be done in most cases without notifying any law society, so there are no reliable statistics on the usage of this new ability, every indication is that lawyers are exercising their mobility rights.

While all jurisdictions provide coverage to members of the public who have suffered financial losses due to lawyer misappropriation, jurisdictional differences exist with respect to eligibility for coverage and coverage limits.

Purpose

The purpose of this agreement is to bring more consistency, certainty and transparency to the process for compensating the public if funds are misappropriated by lawyers exercising their temporary mobility rights under the National Mobility Agreement. In order to do that, the signatories to the National Mobility Agreement hereby agree to amend the Agreement by adopting new coverage limits for defalcation compensation claims against their members when they provide legal services while practising temporarily in or with respect to the law of another jurisdiction and establishing new procedures for investigating and adjudicating claims.

Mobility Defalcation Compensation Agreement

THE SIGNATORIES AGREE AS FOLLOWS:

Definitions

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

“defalcation compensation coverage” means the coverage to be provided by a home governing body to compensate members of the public who sustain a financial loss arising from the misappropriation of monies or property by a lawyer while providing legal services on a temporary basis in a host jurisdiction or with respect to the law of a host jurisdiction;

“governing body” means the Law Society or Barristers’ Society in a Canadian common law jurisdiction, and the Barreau;

“home governing body” means any or all of the governing bodies 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;

“Inter-Jurisdictional Practice Protocol” means the 1994 Inter-Jurisdictional Practice Protocol of the Federation of Law Societies of Canada, as amended from time to time;

“lawyer” means a member of a signatory body;

“National Mobility Agreement” or **“NMA”** means the 2002 National Mobility Agreement of the Federation of Law Societies of Canada, as amended from time to time;

“practice of law” has the meaning with respect to each jurisdiction that applies in that jurisdiction;

“providing legal services” means engaging in the practice of law: in a Canadian jurisdiction or with respect to the law of a Canadian jurisdiction;

“reciprocating governing body” means a governing body that has signed and implemented the provisions of this Agreement.

General

2. The signatory governing bodies 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, insurance or other policies and programs to the extent they consider necessary or advisable in order to implement the provisions of this Agreement;

Mobility Defalcation Compensation Agreement

- (c) comply with the spirit and intent of this Agreement to facilitate mobility of Canadian lawyers in the public interest and strive to resolve any differences among them in that spirit and in favour of that intent; and
 - (d) work co-operatively to resolve all current and future differences and ambiguities in legislation, policies and programs regarding inter-jurisdictional mobility.
3. Signatory governing bodies will subscribe to this Agreement and be bound by it by means of the signature of an authorized person affixed to any copy of this Agreement.
4. A signatory governing body will not, by reason of this Agreement alone,
- (a) grant to a lawyer who is a member of another governing body greater rights to provide legal services than are permitted to the lawyer by his or her home governing body; or
 - (b) relieve a lawyer of restrictions or limits on the lawyer's right to practise, except under conditions that apply to all members of the signatory governing body.

Defalcation Compensation Coverage for Mobile Lawyers

5. The signatories adopt the "Principles for Uniform Compensation Fund Coverage for Mobile Lawyers" adopted by the Council of the Federation of Law Societies of Canada (the "Federation") in March 2009, particularized as follows:
- (a) The defalcation compensation coverage in place in a lawyer's home jurisdiction must respond to a claim made against one of its lawyers arising from the lawyer providing legal services on a temporary basis in a host jurisdiction;
 - (b) A home governing body must provide defalcation compensation fund coverage of at least \$250,000 per claimant, with an annual limit per lawyer of at least \$2 million, subject to the annual aggregate limit in place in the home jurisdiction;
 - (c) No classes of claimants may be excluded from coverage;
 - (d) Claimants must contact the lawyer's home governing body and comply with the claims process in place in the home jurisdiction;
 - (e) Subject to paragraphs (b) and (c) above, the home jurisdiction will follow its local payment guidelines, rules, policies and procedures;

Mobility Defalcation Compensation Agreement

- (f) When a claim is made, the home governing body must:
- (i) notify the host governing body,
 - (ii) discuss with the host governing body the manner in which the investigation of the claim will be handled, and
 - (iii) keep the host governing body informed on the progress of the investigation;
- (g) When a claim is made, the home governing body may:
- (i) ask the host governing body, on the basis of the public interest, convenience and cost, to assume conduct of the investigation of the claim, and
 - (ii) agree with the host governing body as to the share of the costs of the investigation to be borne by each;
- (h) Where the identity of a home jurisdiction is not obvious because a lawyer is a member and entitled to practise law in more than one jurisdiction, the governing body of the jurisdiction that has the closest and most real connection to the claim will be responsible for responding to the claim;
- (i) The factors that must be considered in order to determine which jurisdiction has the closest and most real connection to a claim include, but are not limited to, the following:
- (i) the jurisdiction whose law was being practised by the lawyer;
 - (ii) where the lawyer performed the services involved in the claim;
 - (iii) the ordinary location of the client;
 - (iv) the location of the subject matter of the services provided, or the source of the subject matter;
 - (v) the jurisdiction in which proceedings are commenced or are likely to be commenced;
 - (vi) where the trust funds were, or ought to have been, deposited; (j) If the identity of a host jurisdiction is not obvious, the host will be determined by applying the criteria set out in clauses (h) and (i).

Mobility Defalcation Compensation Agreement

Dispute Resolution

6. If a dispute arises with a governing body concerning any matter under this Agreement, a signatory to this Agreement may do one or both of the following:

- (a) agree with a governing body to refer the matter to a single mediator;
- (b) submit the dispute to arbitration under Appendix 5 of the Inter-Jurisdictional Practice Protocol.

Claimants' rights preserved

7. Governing bodies that refer a dispute to mediation or arbitration under clause 7 must make their best efforts to ensure that the ability of a rightful claimant to receive compensation in a timely fashion is not prejudiced.

Implementation

8. Provisions implementing the terms of this Agreement apply immediately with respect to claims for compensation arising when a lawyer who is a member of a reciprocating governing body provides legal services with respect to the jurisdiction of a different reciprocating governing body. The provisions previously in force under the National Mobility Agreement continue to apply with respect to all other claims.

9. Clause 22 of the NMA and the provisions in clause 42 of the NMA that apply to defalcation compensation coverage are of no effect with respect to claims involving only reciprocating governing bodies. When all signatory governing bodies have implemented this agreement, those provisions are hereby rescinded.

National Excess Plan

10. The signatories agree that the Federation of Law Societies of Canada will

- (a) maintain the National Excess Plan established under the Inter-Jurisdictional Practice Protocol until all signatory governing bodies have implemented this agreement, and
- (b) decide on the future use or disposition of the funds in the plan.

Mobility Defalcation Compensation Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: 
Authorized Signatory

June 21, 2011
Date

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF MANITOBA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____
Authorized Signatory

Date

Mobility Defalcation Compensation Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF BRITISH COLUMBIA

Per:  _____
Authorized Signatory

Date

LAW SOCIETY OF MANITOBA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____
Authorized Signatory

Date

Mobility Defalcation Compensation Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF MANITOBA

Per: *[Signature]*
Authorized Signatory

May 9, 2010
Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____
Authorized Signatory

Date

Mobility Defalcation Compensation Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF MANITOBA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEW BRUNSWICK

Per: Muriel-Louise Belanger-Richard
Authorized Signatory

November 26, 2010
Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: _____
Authorized Signatory

Date

Mobility Defalcation Compensation Agreement

SIGNED as of the dates indicated below.

LAW SOCIETY OF ALBERTA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF BRITISH COLUMBIA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF MANITOBA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEW BRUNSWICK

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF NEWFOUNDLAND AND LABRADOR

Per: Morgan Cooper
Authorized Signatory

December 13/2012
Date

Mobility Defalcation Compensation Agreement

NOVA SCOTIA BARRISTERS' SOCIETY

Per: 
Authorized Signatory

Nov. 25, 2010
Date

LAW SOCIETY OF UPPER CANADA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____
Authorized Signatory

Date

BARREAU DU QUÉBEC

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____
Authorized Signatory

Date

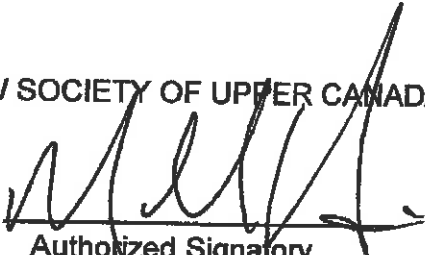
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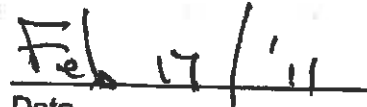
NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF UPPER CANADA

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Authorized Signatory


Date

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Per: _____
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BARREAU DU QUÉBEC

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Authorized Signatory

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Authorized Signatory

Date

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NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF UPPER CANADA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: My J. Wuy
Authorized Signatory

18 December 2011
Date

BARREAU DU QUÉBEC

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF SASKATCHEWAN

Per: _____
Authorized Signatory

Date

Mobility Defalcation Compensation Agreement

NOVA SCOTIA BARRISTERS' SOCIETY

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF UPPER CANADA

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF PRINCE EDWARD ISLAND

Per: _____
Authorized Signatory

Date

BARREAU DU QUÉBEC

Per: _____
Authorized Signatory

Date

LAW SOCIETY OF SASKATCHEWAN

Per: Ta Schlyk
Authorized Signatory

November 26, 2010
Date