

Foreign Legal Consultants in Canada

Conseillers juridiques étrangers
au Canada

Federation of Law Societies of Canada

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Introduction

In this document, a 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 gives legal advice in one Canadian provincial jurisdiction respecting the laws of that country or of the internal jurisdiction in which that person is qualified. In British Columbia, a Foreign Legal Consultants is referred to as a Practitioner of foreign law.

The present document **Foreign Legal Consultants in Canada** provides a compilation of the rules and other regulatory provisions in Canada that relate to the recognition of foreign legal consultants by Canadian Law Societies.

In August 1988, the delegates of the Federation of Law Societies of Canada resolved to strike the **Interjurisdictional Practice Committee (IPC)**. Jack Edwards, Q.C., now a judge at the Supreme Court of British Columbia, acted as Chair of the Committee, and each Law Society, to the exception of the Law Society of the Northwest Territories and the Law Society of Yukon, appointed a representative to the Committee.

The IPC was then divided into 3 subcommittees, one of which was to deal with the matter of foreign legal consultants.

In February 1991, the delegates of the Federation considered the December 1990 Report of the IPC. They then resolved to approve the report in principle and resolved to strike an implementation committee to encourage and co-ordinate action to implement the recommendations in the report.

Dans ce document, un conseiller juridique étranger désigne une personne habile à pratiquer le droit dans un pays autre que le Canada, ou dans une juridiction interne de cet autre pays, qui pratique dans une province du Canada le droit de ce pays ou de cette juridiction interne, selon le cas. En Colombie-Britannique, un conseiller juridique étranger est désigné comme un praticien de droit étranger.

Le présent document de recherche **Conseillers juridiques étrangers au Canada** offre une compilation des dispositions législatives et autres qui permettent la reconnaissance des conseillers juridiques étrangers par les ordres professionnels de juristes au Canada.

En août 1988, les délégués de la Fédération des professions juridiques du Canada ont établi le **Comité sur l'exercice interjuridictionnel (CEI)**. Jack Edwards, c.r., maintenant juge à la cour suprême de la Colombie-Britannique, présidait ce comité. Chaque ordre de juristes, à l'exception des barreaux des Territoires du Nord-Ouest et du Yukon, avait nommé un représentant au comité

Le CEI s'est alors divisé en 3 sous-comités, dont l'un deux avait le mandat d'examiner la question des conseillers juridiques étrangers.

En février 1991, les délégués de la Fédération ont étudié le rapport du CEI de décembre 1990. Ils ont alors approuvé le rapport et ont établi un comité chargé d'encourager et de coordonner l'exécution des recommandations du rapport.

The December 1990 report recommended to the Law Societies the adoption of a foreign legal consultant regime. At this time, the Law Society of British Columbia and the Law Society of Upper Canada already had regimes which allowed the recognition of foreign legal consultants within their jurisdiction.

The IPC then developed an **Interjurisdictional Practice Protocol** which was adopted by 10 of the 13 Law Societies in February 1994. By this time, the Law Society of Alberta and the Law Society of Saskatchewan had adopted a foreign legal consultant regime.

Following the signing of the Protocol, the **Interjurisdictional Practice Protocol Implementation Committee** was formed to facilitate the implementation of a nationwide regulatory regime and to promote the adoption of uniform standards and procedures in accordance with the Protocol. The IPPIC meets from time to time to review the progress of implementation of the Protocol in the various jurisdictions and related issues.

Since the adoption of the Protocol in February 1994, the Nova Scotia Barristers' Society was the first society to adopt a full regime for the recognition of foreign legal consultants. Since then, the Law Society of Prince Edward Island has implemented its regime. The Law Society of Manitoba should be the next society with a operative regime. Other Law Societies are working towards its implementation.

Le rapport de décembre 1990 recommandait aux barreaux d'adopter un régime pour la reconnaissance des conseillers juridiques étrangers. À ce moment, les barreaux de la Colombie-Britannique et de l'Ontario avaient déjà en place un régime pour permettre la reconnaissance des conseillers juridiques étrangers dans leur juridiction.

Le CEI a alors élaboré le **Protocole sur l'exercice interjuridictionnel du droit** qui fut adopté par 10 des 13 ordres professionnels de juristes en février 1994. À cette date, les barreaux de l'Alberta et de la Saskatchewan avaient adopté un régime pour les conseillers juridiques étrangers.

Suite à la signature du Protocole en février 1994, les ordres professionnels ont constitué le **Comité d'exécution du Protocole sur l'exercice interjuridictionnel** pour voir à l'exécution du Protocole dans les diverses juridictions et pour assurer l'adoption de normes nationales en vertu du Protocole. Le comité se rencontre de temps en temps pour faire le point de la situation en ce qui a trait à l'exécution du Protocole dans les diverses juridictions.

Suite à l'adoption du Protocole en février 1994, la Nova Scotia Barristers' Society fut le premier barreau à se munir d'un régime pour les conseillers juridiques étrangers. Depuis lors, le barreau de l'Île-du-Prince-Édouard a son régime et la Société du Barreau du Manitoba devrait être le prochain barreau à avoir son régime bien en place. Les autres barreaux travaillent en vue de ce même objectif.

For further information on foreign legal consultants in Canada, you can communicate with the Federation's office, or with the Law Societies at the following addresses:

The Law Society of British Columbia

845 Cambie Street, 8th Floor
Vancouver, BC V6B 4Z9
Tel.: (604) 669-2533
Fax: (604) 669-5232

The Law Society of Saskatchewan

Suite 1100, 2500 Victoria Ave
Regina, SK S4P 3X2
Tel.: (306) 569-8242
Fax: (306) 352-2989

The Law Society of Upper Canada

130 Queen Street West
Toronto, ON M5H 2N6
Tel.: (416) 947-3344
Fax: (416) 947-9062

Chambre des notaires du Québec

800, Place-Victoria, bureau 700, C.P. 162
Montréal, QC H4Z 1L8
Tel.: (514) 879-1793
Fax: (514) 879-1923

Nova Scotia Barristers' Society

1101-1645 Granville Street
Halifax, NS B3J 1X3
Tel.: (902) 422-1491
Fax: (902) 429-4869

The Law Society of Newfoundland

5th Floor, Atlantic Place
215 Water Street, P.O.Box 1028
St. John's, NF A1C 5M3
Tel.: (709) 722-4740
Fax: (709) 722-8902

The Law Society of Yukon

Suite 201, 302 Steele Street
Whitehorse, YT Y1A 2C5
Tel.: (403) 668-4231
Fax: (403) 667-7556

Pour de plus amples renseignements, vous pouvez communiquer avec le bureau de la Fédération, ou avec les ordres professionnels de juristes suivants:

The Law Society of Alberta

Suite 600, 919 - 11th Avenue South West
Calgary, AB T2R 1P3
Tel.: (403) 229-4700
Fax: (403) 228-1728

The Law Society of Manitoba

219 Kennedy Street
Winnipeg, MB R3C 1S8
Tel.: (204) 942-5571
Fax: (204) 956-0624

Barreau du Québec

445, boul. Saint-Laurent
Montréal, QC H2Y 3T8
Tel.: (514) 954-3400
Fax: (514) 954-3407

The Law Society of New Brunswick

Suite 206, 1133 Regent Street
Fredericton, NB E3B 3Z2
Tel.: (506) 458-8540
Fax: (506) 451-1421

The Law Society of Prince Edward Island

P.O. Box 128, 49 Water Street
Charlottetown, PE C1A 7K2
Tel.: (902) 566-1666
Fax: (902) 368-7557

Law Society of the Northwest Territories

Lower Level, Laurentian Building
4918 - 50th Street, P.O. Box 1298,
Yellowknife, NT X1A 2N9
Tel.: (867) 873-3828
Fax: (867) 873-6344

1. The Law Society of British Columbia

The topic of practitioners of foreign law (foreign legal consultants) for the Law Society of British Columbia is dealt with in the Legal Profession Act and the Rules of the Law Society as follows:

Le sujet des conseillers juridiques étrangers est traité dans le Legal Profession Act et dans les règlements suivants:

Legal Profession Act, S.B.C., 1998, c.9,

Part 2 - Membership and Authority to Practise Law, Section 17

Rules, The Law Society of British Columbia
Section 405 - Foreign Legal Consultants
Section 770 - Foreign Legal Consultants
Section I - Foreign Legal Consultants
Section J - Foreign Legal Consultant fees

Legal Profession Act, S.B.C., 1998, c.9

Part 2 – Membership and Authority to Practise Law

Division 1 – Practice of Law

- 14 Members
- 15 Authority to practise law
- 16 Interprovincial practice
- 17 **Practitioners of foreign law**
- 18 Non-resident partners

Practitioners of foreign law

17(1) The benchers may do any or all of the following:

- (a) permit a person holding professional legal qualifications obtained in a country other than Canada to practise law;
- (b) attach conditions or limitations to a permission granted under paragraph (a);
- (c) make rules establishing conditions or limitations under which permission may be granted under paragraph (a), including payment of a fee.

(2) Parts 3 to 8 and 10 apply to a person given permission under this section.

RULES - The Law Society of British Columbia

RULES

Part 2 - Membership and Authority to Practice Law

Division 1 – Practice of Law

Members

Practitioners of foreign law

- 2-18(1) A person who qualifies under section 17 of the Act may apply to the Executive Director for a permit to act as a practitioner of foreign law in British Columbia by delivering 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, and
 - (b) the permit fee specified in Schedule 1.
- (2) The Executive Director may issue to a person applying under subrule (1) a permit to act as a practitioner of foreign law if satisfied that the person
- (a) is a member of the legal profession in one or more foreign jurisdictions,
 - (b) is not suspended or disbarred and has not otherwise ceased, for disciplinary reasons, to be a member of a governing body or of the legal profession in any foreign jurisdiction,
 - (c) is a person of good character and repute,
 - (d) has practised the law of a foreign jurisdiction for at least 3 of the past 5 years, or undertakes in writing to act as a practitioner of foreign law in British Columbia only under the direct supervision of a practitioner of foreign law who has practised law in that foreign jurisdiction for at least 3 of the past 5 years,
 - (e) carries professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1), and
 - (ii) that specifically extends to services rendered by the practitioner of foreign law while acting as such in British Columbia.
- (3) Subject to subrule (4), the Executive Director may attach conditions to a permit issued or renewed under this Rule.
- (4) The Executive Director may only attach under subrule (3) conditions that are authorized by the Credentials Committee.
- (5) A permit issued under subrule (2) is valid for one year from the issue date shown on it.
- (6) Despite subrule (5), a practitioner of foreign law permit ceases to be valid if the practitioner of foreign law
- (a) is suspended as a result of proceedings taken under Part 4, or
 - (b) ceases to comply with any of the requirements of this Part.

Restrictions and limitations

- 2-19(1) No one may practise the law of a foreign jurisdiction or market a foreign legal practice in British Columbia without a permit issued under Rule 2-18(2).
- (2) A practitioner of foreign law who holds a current permit issued under Rule 2-18(2) may provide legal services in British Columbia respecting
- (a) the law of the jurisdiction in which the practitioner of foreign law is fully licensed to practise law, and
 - (b) trans-jurisdictional or international legal transactions.
- (3) A practitioner of foreign law must not
- (a) provide advice respecting the law of British Columbia or another Canadian jurisdiction, or
 - (b) deal in any way with funds that would, if accepted, held, transferred or otherwise dealt with by a lawyer, constitute trust funds, except money received on deposit for fees to be earned in the future by the practitioner of foreign law.

- (4) The Act, these Rules and the Professional Conduct Handbook apply to and bind a practitioner of foreign law.
- (5) A practitioner of foreign law must notify the Executive Director promptly if he or she
 - (a) is the subject of criminal or professional discipline proceedings in any jurisdiction,
 - (b) ceases to be a member in good standing of the legal profession in any jurisdiction, or
 - (c) fails to complete satisfactorily any continuing legal education program required of the practitioner of foreign law as a member of the legal profession in a foreign jurisdiction.

Dual qualification

2-20 A lawyer, other than a retired or non-practising member, who is qualified to practise law in a foreign jurisdiction may act as a practitioner of foreign law in British Columbia without obtaining a permit, provided the lawyer holds liability insurance that

- (a) specifically extends to the lawyer's activities as a practitioner of foreign law in British Columbia, and
- (b) is in a form and amount at least reasonably comparable to that required of lawyers under Rule 3-21(1).

Marketing of legal services by practitioners of foreign law

2-21 A practitioner of foreign law who is not a member of the Society must do all of the following when engaging in any marketing activity as defined in the Professional Conduct Handbook, Chapter 14, Rule 2:

- (a) use the term "practitioner of foreign law;"
- (b) state the foreign jurisdiction in which he or she holds professional legal qualifications, and the professional title used in that jurisdiction;
- (c) not use any designation or make any representation from which a recipient might reasonably conclude that the practitioner of foreign law is a member of the Society.

Renewal of permit

2-22(1) In order to renew a practitioner of foreign law permit, a practitioner of foreign law must apply to the Executive Director for a renewal of the permit before his or her permit expires.

- (2) A renewal application must include
 - (a) a completed permit renewal application in a form approved by the Credentials Committee, including a written consent for the release of relevant information to the Society,
 - (b) evidence satisfactory to the Executive Director that the practitioner of foreign law continues to comply with the requirements set out in Rule 2-18(2), and
 - (c) the renewal fee specified in Schedule 1.
- (3) The Executive Director may renew the permit of a practitioner of foreign law who has complied with the Act and these Rules.
- (4) Subject to subrule (5), a permit renewed under subrule (3) is valid for one year.
- (5) Rule 2-18(6) applies to a permit renewed under subrule (3).
- (6) A practitioner of foreign law who fails to pay when due the fee for renewal of a permit under subrule (2), including applicable taxes, or any part of it, must pay the late payment fee specified in Schedule 1.

SCHEDULE 1 2001 LAW SOCIETY FEES AND ASSESSMENTS

J. Practitioners of foreign law

1. Permit fee for practitioners of foreign law (Rule 2-18(1)(b))	500.00
2. Permit renewal fee for practitioners of foreign law (Rule 2-22(2)(c))	100.00
3. Late payment fee (Rule 2-22(6))	100.00

2. The Law Society of Alberta

The topic of foreign legal consultants for the Law Society of Alberta is dealt with in the Rules of the Law Society as follows:

Le sujet des conseillers juridiques étrangers est traité dans les règlements du Law Society of Alberta comme suite:

Rules, The Law Society of Alberta
Part 2 - Membership and qualifications to practise law
Division 6 - Foreign Legal Consultants (Sections 74 - 80)

RULES - The Law Society of Alberta

Part 2 - Membership and Qualifications to Practise Law

DIVISION 6

FOREIGN LEGAL CONSULTANTS

RULE 74 - Definitions

RULE 75 - Application for licence

RULE 76 - Issuance of licence

RULE 77 - Authorized services

RULE 78 - Use of title and advertising of services

RULE 79 - Annual licence fees and filings

RULE 80 - Cancellation or suspension of licence

Definitions

74 In this Division,

- (a) "**foreign legal consultant**" means a person who provides legal advice to others respecting the laws of a foreign country or a political division of a foreign country and who is not a member of the Society;
- (b) "licence" means a licence issued pursuant to Rule 76 or a renewed licence issued pursuant to Rule 79(6);
- (c) "licensed **foreign legal consultant**" or "licensee" means a person who holds a subsisting licence to carry on the practice of a **foreign legal consultant**;

- (d) a reference to "a member with foreign legal qualifications" in relation to a foreign country or a political subdivision of a foreign country means a member of the Society who is authorized to practise law in that foreign country or political subdivision by reason of membership in an extraprovincial law society in that country or political subdivision or otherwise;
- (e) "practise as a **foreign legal consultant**" means to carry on a practice as a legal advisor with respect to the laws of a foreign country or of a political subdivision of a foreign country, and "the practice of a **foreign legal consultant**" has a corresponding meaning.

Application for licence

75 (1) An application for a licence to practise as a **foreign legal consultant** may only be made by a person who is authorized to practise law in that country or in a political subdivision of that country.

75 (2) An application for a licence shall be furnished to the Secretary and shall be in a form approved by the Secretary.

75 (3) An application for a licence shall contain or be accompanied by

- (a) proof that the applicant is a member in good standing of the legal profession in the foreign country where the applicant is authorized to practise law or in one of its political subdivisions;
- (b) 2 certificates of good character and reputation in Form 2-8, as modified by the Secretary;
- (c) proof that the applicant has been actively engaged in the practice of law in the foreign country or political subdivision for at least 3 years, or an undertaking that the applicant will practise as a **foreign legal consultant**, while licensed, only under the direct supervision of
 - (i) a licensed **foreign legal consultant** whose licence relates to the same country or political subdivision, or
 - (ii) a member with foreign legal qualifications who is authorized to practise law in the same country or political subdivision,

and who has been actively engaged in the practice of law in that foreign country or political subdivision for at least 3 years;

- (d) an undertaking that the applicant, while licensed,
 - (i) will not, in his or her capacity as a **foreign legal consultant**, 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 money as defined in Rule 119 (1)(m);
 - (ii) will submit to the jurisdiction of the Society and will comply with and be bound by the Act, the Rules and any code of conduct;
 - (iii) will comply with any further conditions which may be imposed on the licensee or attached to the licence;
 - (iv) will notify the Secretary promptly if the applicant fails to complete satisfactorily whatever continuing legal education program is required of members of the legal profession of the applicant's foreign country or political subdivision, and
 - (v) will maintain the insurance, bonds, indemnity or other security described in clauses (e) and (f);
- (e) proof that the applicant will, while licensed, carry professional liability insurance or a bond, indemnity or other security
 - (i) in a form and amount which is reasonably comparable with that required for active members under the Society's indemnity program under Part 5 of the Act, and
 - (ii) which specifically extends to services rendered by the applicant while licensed and carrying on in Alberta the practice of a **foreign legal consultant**;

- (f) proof that the applicant will, while licensed, participate in a program or carry a fidelity bond or other security satisfactory to the Secretary and in an amount of at least \$1,000,000.00, for the purpose of reimbursing persons who sustain a pecuniary loss as a result of the misappropriation or wrongful conversion by the applicant of money or other property entrusted to or received by the applicant in the course of practising as a **foreign legal consultant** in Alberta;
- (g) the prescribed application fee and licence fee.

Issuance of licence

76 (1) The Secretary may

- (a) issue a licence to an applicant eligible for a licence under Rule 75(1) and whose application otherwise complies with Rule 75, or
- (b) attach conditions to a licence; or
- (c) refer the application to the Education Committee.

76 (2) On referral of the application by the Secretary, the Education Committee may,

- (a) issue a licence to an applicant eligible for a licence under Rule 75(1);
- (b) prescribe conditions that may be contained in a licence;
- (c) refuse the application.

76 (3) A licence, when issued, shall authorize the licensee to carry on, in Alberta, the practice of a **foreign legal consultant**.

76 (4) A licence shall expire on March 15 following the date on which it is issued, unless the licence is earlier renewed.

Authorized services

77 (1) For the purposes of section 103(2)(m) of the Act, a licensed **foreign legal consultant** is permitted to carry on in Alberta the practice of a **foreign legal consultant**, but only with respect to the laws of the foreign country or the political subdivision of a foreign country specified in the licensee's licence, and subject to these Rules and the conditions imposed by the licence.

77 (2) Notwithstanding anything in these Rules, a licensed **foreign legal consultant** shall not, in Alberta, provide legal advice of any kind that the licensee would not be qualified or permitted to provide under the laws of the foreign country or political subdivision in which the licensee is authorized to practise law, if the advice were given by the licensee in the course of practising as a member of the legal profession in that foreign country or political subdivision.

Use of title and advertising of services

78 (1) No person, other than a licensee or a member with foreign legal qualifications, shall

- (a) use the title "**foreign legal consultant**" or any similar title or designation,
- (b) use any title, designation, description, abbreviation, letter or symbol, alone or in combination, that represents or implies that the person is qualified to carry on in Alberta the practice of a **foreign legal consultant**.

78 (2) A licensed **foreign legal consultant**, when engaging in advertising or any other form of marketing activity in Alberta,

- (a) shall use only the designation "licensed **foreign legal consultant**",
- (b) shall state the foreign country or political subdivision in respect of whose laws the consultant is qualified to give legal advice, and the professional title used in that country or political subdivision, and

- (c) shall not use any designation or make any representation from which a person dealing with the consultant might reasonably conclude that the consultant is a member of the Society.

Annual licence fees and filings

- 79 (1) The Secretary shall, on or before February 15 in each year, mail
- (a) to each licensee a notice showing the amount of the annual fee payable by the licensee for that year and stating that the annual fee shall be received by the Society at its offices in Calgary not later than the next following March 15, and
 - (b) requiring the licensee to file with the Secretary, not later than the next following March 15, proof satisfactory to the Secretary that the licensee continues to comply with the requirements described in Rule 75(3) (a), (d)(i), (d)(iii), (e) and (f).
- 79 (2) The Education Committee may by order suspend a licence if
- (a) the annual licence fee payable by the licensee under subrule (1)(a), or
 - (b) the proof required to be filed under subrule (1)(b),

is not received at the offices of the Society in Calgary before the deadline prescribed by subrule (1).

- 79 (3) The Secretary shall notify the licensee of a suspension order immediately after the order is made.

- 79 (4) The suspension of a licence pursuant to an order under subrule (2) terminates when the Society has received at its offices in Calgary
- (a) the total amount of the annual fee for the year or the proof referred to in subrule (1)(b), or both, as the case may be, and
 - (b) the prescribed suspension termination fee, which may be waived by the Secretary in appropriate circumstances.

- 79 (5) A licensee's liability to the Society for an renewed licence fee arises on March 15 of the year for which the fee is imposed, but, if on that date the licence of the licensee is under suspension, the liability for the fee arises on the date on which the suspension ends.

- 79 (6) The Secretary shall issue a renewed licence to a licensee when the licensee
- (a) has paid the renewed licence fee and any required suspension termination fee, and
 - (b) has filed the proofs referred to in subrule (1)(b).

- 79 (7) Notwithstanding subrule (4), if a licence is under suspension pursuant to subrule (2) for a period of more than 90 days, the Education Committee may, after a hearing of which the licensee is notified and at which the licensee is given an opportunity to be heard, cancel the licence.

Cancellation or suspension of licence

- 80 (1) Subject to subrule (2), the Benchers may order the cancellation or suspension of a licence if the licensee
- (a) is guilty of conduct deserving of sanction,
 - (b) is convicted of an indictable offence, or
 - (c) is the subject of disciplinary proceedings in the foreign country or political subdivision specified in the licence, if the proceedings could result in the suspension or termination of the licensee's right to practise law in that country or political subdivision.

80 (2) For the purpose of subrule (1)(a), a contravention of any condition of the licensee's licence or of any undertaking given to the Secretary under these Rules may be considered as conduct deserving of sanction.

80 (3) For the purposes of applying subrule (1)(a) to a licensee, sections 47 to 79 and 82 and 83 of the Act apply with the necessary changes to the licensee as though

- (a) references in those sections to a member were references to the licensee,
- (b) references in those sections to the membership of a member were references to the licensee's licence, and
- (c) references in those sections to disbarment were references to the cancellation of the licensee's licence.

80 (4) For the purposes of applying subrule (1)(b) to a licensee, sections 48, 50, 80, 82 and 83 of the Act apply, with the necessary changes, to the licensee as though

- (a) references in those sections to a member were references to the licensee,
- (b) references in those sections to the membership of a member were references to the licensee's licence, and
- (c) references in those sections to disbarment were references to cancellation of the licensee's licence.

80 (5) For the purpose of applying subrule (1)(c) to a licensee, sections 48, 50, 81, 82 and 83 of the Act apply, with the necessary changes, to the licensee as though

- (a) references in those sections to a member were references to the licensee,
- (b) references in those sections to the membership of a member were references to the licensee's licence, and
- (c) references in those sections to disbarment were references to cancellation of the licensee's licence.

3. The Law Society of Saskatchewan

The topic of foreign legal consultants for the Law Society of Saskatchewan is dealt with in the Rules of the Law Society as follows:

Le sujet des conseillers juridiques étrangers est traité dans les règlements du Law Society of Saskatchewan comme suit:

Rules, The Law Society of Saskatchewan

Part 7 - Admissions

F. Foreign Legal Consultants (Section 220)

Part 12 - Law Society Fee and Assessments

Section 870 - Licence and permit fees

Part 19 - Marketing of Legal Services

Section 1607 - Letterhead

RULES - The Law Society of Saskatchewan

PART 7 - ADMISSIONS

F. Foreign legal consultants

- 220(1). Foreign legal consultants
- 220(2). Application for Permit
- 220(3). Issuance of Permit
- 220(7). Qualification to Act as a Foreign Legal Consultant
- 220(8). Dual Qualification
- 220(9). Marketing of Legal Services
- 220(10). Renewal of Permit

F. FOREIGN LEGAL CONSULTANTS

Foreign legal consultants

220.(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 Saskatchewan the law of that country or internal jurisdiction, as the case may be.

Application for Permit

220.(2) A person may apply to the Executive Director for a permit to act as a **foreign legal consultant** in Saskatchewan 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 under subrule 870(1).

Issuance of Permit

220.(3) The Executive Director 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 Saskatchewan, only under the direct supervision of a **foreign legal consultant** from that country or internal jurisdiction who has satisfied the 3-year practice requirement,
- (d) has delivered to the Executive Director 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 Act, the Law Society Rules and the Code of Professional Conduct, and
 - (iii) notify the Executive Director 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 Saskatchewan,

- (f) participates in a program or carries a fidelity bond or other security satisfactory to the Society and in an amount of at least \$1,000,000, for the purpose of reimbursing persons who suffer pecuniary loss as a result of the misappropriation or 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 Saskatchewan,

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

220.(4) The Admissions and Education Committee may fix conditions that may be attached to permits which are issued or renewed under this Rule.

220.(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.

220.(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 Act, or
- (b) ceases to comply with any of the requirements of subrules (3) or (4).

Qualification to Act as a Foreign Legal Consultant

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

Dual Qualification

220.(8) 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 Saskatchewan, 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

220.(9) A *foreign legal consultant*, when engaging in advertising or any other form of marketing activity in Saskatchewan:

- (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
[Rule 220(4) amended December 8, 1994]
- (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

220.(10) A *foreign legal consultant* who intends to continue to act as such in Saskatchewan shall, before his or her permit expires, apply to the Executive Director for a renewal of the permit.

220.(11) A renewal application shall include:

- (a) a completed permit renewal application in a form approved by the Benchers,
- (b) evidence satisfactory to the Executive Director 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 under subrule 870(2).

220.(12) The Executive Director may issue to a *foreign legal consultant* who has complied with the Act and these Rules a renewal permit.

220.(13) Subject to subrule (14), a renewal permit issued under subrule (12) is valid for one year.

220.(14) Subrule (6) applies to a permit which has been renewed under subrule (12).

PART 12 - LAW SOCIETY FEE AND ASSESSMENTS

Licence and permit fees

870.(1) The fee payable by an applicant under Rule 220(2)(b) for a permit to become a **foreign legal consultant** is as set out in Schedule 1 following this Part.

870.(2) The renewal fee payable by a **foreign legal consultant** under Rule 220(11)(c) is as set out in Schedule 1 following this Part.

I. Licence and permit fees

- | | |
|---|-------|
| 1. <u>Foreign legal consultant</u> permit fee | \$500 |
| 2. <u>Foreign legal consultant</u> renewal fee | \$100 |

PART 19 - MARKETING OF LEGAL SERVICES

Letterhead

1607. A member shall not, on his or her firm's letterhead, list a person who is not an active member of the Society in good standing, except where that person:

- (a) is appropriately designated as:
 - (i) an inactive member,
 - (ii) a retired member,
 - (iii) a deceased member,
 - (iv) a student-at-law, or
 - (v) a **foreign legal consultant**, or
- (b) is a member of an inter-jurisdictional law firm.

4. The Law Society of Manitoba / Société du Barreau du Manitoba

The Law Society Act of Manitoba has been expanded to permit the society to recognize foreign legal consultants. The Rules on foreign legal consultants of the Law Society of Manitoba are presently in translation and should soon be available. The Application Form is online at http://www.lawsociety.mb.ca/foreign_application.htm

Des modifications à la Loi sur le Barreau ont été adoptées afin de permettre à la Société du Barreau du Manitoba de reconnaître les conseillers juridiques étrangers. Des règlements sont présentement en traduction et seront disponibles bientôt.

Hereunder is provided / *Ci-dessous se trouvent:*

Law Society Act / *Loi sur la Société du Barreau*

Section 42.1 / *Article 42.1*

Foreign legal consultant / *Consultant juridique étranger*

CHAPTER L100 THE LAW SOCIETY ACT

Foreign legal consultant

42.1(1) The governing body may permit a person who is qualified to practise law in a country, or within a jurisdiction of a country, other than Canada to practise the law of the country or jurisdiction in Manitoba, subject to any condition the governing body considers necessary or advisable, including the payment of a fee.

Application of Act and rules

42.1(2) This Act and the rules of the governing body apply with necessary modifications to a person permitted under subsection (1) to practise in Manitoba, but the governing body may not disbar the person.

Rules respecting foreign legal consultants

42.1(3) The governing body may make rules respecting practise by persons referred to in subsection (1), including the establishment of conditions of their practise and the issuance, cancellation and renewal of licences or permits to practise.

CHAPITRE L100 LOI SUR LA SOCIÉTÉ DU BARREAU

Consultant juridique étranger

42.1(1) Le corps administratif peut permettre à une personne qui est habilitée à pratiquer le droit dans un pays ou dans l'un des ressorts d'un pays qui n'est pas le Canada de pratiquer au Manitoba le droit de ce pays ou de ce ressort, sous réserve des conditions qu'il juge nécessaires ou indiquées, notamment le paiement d'un droit.

Application de la Loi et des règles

42.1(2) La présente loi et les règles du corps administratif s'appliquent, avec les adaptations nécessaires, aux personnes visées au paragraphe (1); le corps administratif ne peut toutefois radier ces personnes.

Prise de règles

42.1(3) Le corps administratif peut prendre des règles concernant la pratique du droit par les personnes visées au paragraphe (1), notamment pour régir les conditions de leur pratique et la délivrance, l'annulation et le renouvellement de licences ou de permis relatifs à celle-ci.

5. The Law Society of Upper Canada / Barreau du Haut-Canada

The topic of foreign legal consultants for the Law Society of Upper Canada is dealt with in a Report which was submitted to Convocation in September 1988.

Le sujet des conseillers juridiques étrangers au Barreau du Haut-Canada est traité dans un rapport rendu au conseil en septembre 1988.

Hereunder is provided / *Ci-dessous se trouvent:*

Report, from the Special Committee on Foreign Lawyers, submitted to Convocation in September 1988;

Information regarding application to be licensed as a Foreign Legal Consultant in Ontario.

Report to Convocation - September 1988

**TO THE BENCHERS OF THE
LAW SOCIETY OF UPPER CANADA
IN CONVOCATION ASSEMBLED**

The SPECIAL COMMITTEE ON FOREIGN LAWYERS begs leave to report:

In September, 1986 Convocation established a Special Committee on Foreign Lawyers comprised of Messrs. Spence (Chairman), Ground, Outerbridge, Rock and Sopinka.

The Special Committee on Foreign Lawyers has in the past months been reviewing the question of allowing lawyers from foreign jurisdictions to establish offices in Ontario as legal consultants to advise on the law of their home jurisdiction.

This debate has revolved around requests from lawyers in jurisdictions outside of Canada. For lawyers within Canada there are procedures for being called to the Bar of other provinces and in Ontario, our Rules of Professional Conduct permit the establishment of interprovincial law firms. The Society has also recognized the federal nature of the country and permitted law firms from other provinces to establish offices in Ottawa which are restricted to advising on matters of federal law and to practice before the federal Courts and boards.

While in the past most of the inquiries have been from U.S. lawyers particularly those in border towns and cities who wish to open an Ontario office to advise on immigration matters, it is expected that in the near future the Society will receive requests from large international firms.

The Society in the past has taken the view that such an arrangement would be a violation of s.50(1) of the Law Society Act. The rationale for this policy being, that advising a person in Ontario on a question of law, no matter of what jurisdiction, is practising law within s.50. In addition, it was felt that advice to Ontario residents about the effect of the law of a foreign jurisdiction must necessarily involve an appreciation of the inter-relationship of the foreign jurisdiction's laws with those of Ontario and would lead inevitably to the foreign lawyer giving advice on Ontario law.

The increased emphasis on international trade development has led at least one U.S. jurisdiction (New York) to adopt a system for licensing **< foreign legal consultants >** and four other jurisdictions to investigate the possibility: District of Columbia, Michigan, California and Texas.

The New York Plan started in 1974 and in December 1985 there were 75 foreign lawyers registered as consultants. This number appears to be low given the size of the New York market. However, it may be attributable to the fact that many foreign lawyers as an alternative, get called to the Bar of New York. There is no citizenship requirement in New York as there is in Ontario.

Generally speaking the reasoning in the U.S. jurisdictions is that as set out in a report of the Washington, D.C. Bar:

"We believe that the licensing of special legal consultants... would significantly facilitate the development of the District as an international commercial and financial centre without causing any adverse effect on the existing members of the Bar. We believe that the District can be even more competitive in winning this investment if it can provide foreign investors the same kind of opportunity to consult foreign lawyers here as is now possible in the state of New York."

The U.S. schemes permit foreign lawyers to be designated as legal consultants provided they meet certain requirements concerning years of practice in the home jurisdiction, maintenance of an office in the home jurisdiction and undertakings to limit their practice to giving advice about the laws of their home jurisdiction. Foreign consultants are also bound by the Rules of Professional Conduct applicable in the jurisdiction in which they are licensed as foreign consultants.

In some proposals there is a requirement of reciprocity, that is, the foreign jurisdiction must also permit the licensing of ***foreign legal consultants***. This is not an element of the New York plan nor the plan in effect in the United Kingdom.

A proposed rule governing ***foreign legal consultants*** is presently under consideration in Texas.

The basic elements are:

- (a) Good moral character;
- (b) Actual resident in the state of Texas;
- (c) Proper immigration status;
- (d) Twenty-six (26) years of age or older;
- (e) Member in good standing of home jurisdiction governing body;
- (f) May only use the title "***Foreign Legal Consultant***"; and
- (g) Subject to control by the Supreme Court of Texas and the Rules of Professional Conduct applicable to members of the State Bar of Texas.

The Law Society of England and Wales also has rules governing ***foreign legal consultants***. As in the U.S. jurisdictions the basic requirements are that applicants be members in good standing of the governing body of their home jurisdiction, have evidence of proper immigration status, have evidence of professional liability insurance and sign an undertaking as to the scope and nature of the practice while in the United Kingdom.

The U.S. schemes and the U.K. rules typically require foreign consultants to restrict their practice to the law of their home jurisdiction and in a number of cases specifically exclude certain categories of legal work such as deeds and wills.

The Law Society of British Columbia has also reviewed the issue of ***foreign legal consultants*** as part of a larger review of interprovincial law firms. The British Columbia Committee has put forward the following rule for consideration:

1. The Law Society may license as a **Foreign Legal Consultant**, applicants who:
 - a) reside or have a bona fide intention to reside in the Province;
 - b) satisfy the benchers of their good moral character;
 - c) offer proof of having been in active practice and in good standing in their home jurisdiction for five of the immediately preceding seven years;
 - d) undertake to observe the standards of conduct of the Law Society of British Columbia and to submit to the jurisdiction of the Law Society; and
 - e) offer proof of professional liability insurance in an amount satisfactory to the benchers.

2. A **foreign legal consultant** may offer his services in British Columbia subject to the limitation that he may not:
 - a) Represent another person in any Court or administrative agency in the Province;
 - b) Prepare any instruments that affect:
 - i) title to real estate located in the Province;
 - ii) disposition on death of property located in the Province;
 - iii) administration of a decedent's estate in the Province; and
 - iv) marital relations of, or custody of a child of, a resident of British Columbia.
 - c) Use any title other than "legal consultant on foreign and international law" or his authorized title in conjunction with the name of his home country, nor in any way hold himself out to be a member of the Bar of British Columbia.

The British Columbia rule follows very closely the model being used in the U.S. jurisdictions and in Great Britain.

A further consideration is the effect of the free trade agreement with the United States. Free trade is expected to foster international trade and more Canadian investors and companies will have need of legal advice particularly about the laws of the U.S. One way of ensuring that they have access to such advice is through a system of **foreign legal consultants**.

After carefully reviewing the issues and the schemes in place or proposed in other jurisdictions, your Committee recommends that the Law Society establish a procedure for licensing **foreign legal consultants**. In making this recommendation the Committee wishes to emphasize that **foreign legal consultants** would be strictly limited to advising on the law of their home jurisdiction and that only persons who are members of the Law Society will be allowed to provide advice on the law of Ontario.

Your Committee feels that **foreign legal consultants** will provide a service to individuals and corporations with international dealings. The experience in jurisdictions where the concept has been adopted appears to be positive and there does not appear to have been a substantial impact on the local

profession.

Your Committee recommends the following rule on *foreign legal consultants* be adopted:

Foreign Legal Consultants

1. The Society may license as a *Foreign Legal Consultant* applicants who:
 - (a) are members in good standing of the licensing body in their home jurisdiction, and for at least three of the five preceding years have been actively engaged in the practice of law of that jurisdiction;
 - (b) are members in good standing of the licensing body in their home jurisdiction and who have been actively engaged in the practice of law in their home jurisdiction for less than three years of the five preceding years provided:
 - (i) they are under the supervision of a *Foreign Legal Consultant* licensed pursuant to paragraph (a) and the supervisory arrangement has been approved by the Admissions Committee or
 - (ii) they undertake to comply with terms and conditions approved by the Admissions Committee;
 - (c) are actually resident in Ontario and have complied with applicable immigration requirements or give an undertaking to take up actual residence in Ontario as soon after the granting of the license as practicable;
 - (d) are of good character;
 - (e) provide proof of professional errors and omissions insurance in an amount and form satisfactory to the Society;
 - (f) undertake to observe the standards of professional conduct which are accepted by the legal profession in Ontario including those set out in the Society's Rules of Professional Conduct;
 - (g) undertake to submit to the jurisdiction of the Law Society of Upper Canada in regard to their practice in Ontario;
2. *Foreign Legal Consultants* may offer their services in Ontario subject to the following limitations:
 - (a) they may not hold themselves out as qualified to act as a member of the Law Society of Upper Canada;
 - (b) they may not represent clients in any Court or before any public administrative body;
 - (c) they may not provide advice on matters of Ontario law (which for purposes of these rules includes Canadian law applicable in Ontario);
 - (d) they may not prepare or participate in preparing any document or instrument which is or

which may be governed by the laws of Ontario unless the client has retained a member of the Law Society of Upper Canada who also participates in the preparation of such document or instrument.

3. To insure that the public are not misled about the professional qualifications of **foreign legal consultants** they must on their letterhead and in listings identify themselves by their untranslated title with a translation in brackets with a reference to the country or jurisdiction in which they are licensed.

4. Applications for licensing as a **Foreign Legal Consultant** shall be made to the Admissions Committee which will have the authority to approve or deny the application.

The Committee also received submissions in favour of allowing foreign law firms to practice in Ontario as "international law firms". These submissions envisage arrangements to permit a foreign law firm to practice in Ontario not only the law of its home jurisdiction but also the law of other jurisdictions including the host jurisdiction, provided those lawyers engaged are qualified in the jurisdictions in question. In support of such an approach, it is said that a number of foreign jurisdictions are considering such arrangements and in some jurisdictions they are in place or clearly in prospect. These arrangements would not be permitted by the proposal recommended by the Committee. We have as yet had no experience with foreign law firms practicing in Ontario; in the view of the Committee it is more prudent to start with arrangements of the type which have been in operation for some period of time in other jurisdictions and build a record of experience which can be assessed as a basis for deciding about further steps in this area.

ALL OF WHICH is respectfully submitted.

DATED this 23rd day of September, 1988.

Chair

INFORMATION REGARDING APPLICATION TO BE LICENSED AS A FOREIGN LEGAL CONSULTANT IN ONTARIO

The Law Society of Upper Canada will consider applications to become licensed in Ontario as **Foreign Legal Consultants** from any persons who:

- (a) are members in good standing of the licensing body in their home jurisdiction, and for at least three of the five preceding years have been actively engaged in the practice of law of that jurisdiction;
- (b) are members in good standing of the licensing body in their home jurisdiction and who have been actively engaged in the practice of law in their home jurisdiction for less than three of the five preceding years provided:
 - (i) they are under the supervision of a **foreign legal consultant** licensed pursuant to paragraph (a) and the supervisory arrangement has been approved by the Admissions Committee or
 - (ii) they undertake to comply with terms and conditions approved by the Admissions Committee;
- (c) are actually resident in Ontario and have complied with applicable immigration requirements or give an undertaking to take up actual residence in Ontario as soon after the granting of the licence as practicable;

(Residency in Ontario is a necessity under the Law Society of Upper Canada's ***foreign legal consultant*** regulations. While one can apply and be licensed as a ***foreign legal consultant*** while still resident in the home jurisdiction, the continuing designation is dependent upon the consultant becoming a full-time resident of Ontario within a reasonable time after receiving the designation.)

- (d) are of good character;
- (e) provide proof of professional errors and omissions insurance in an amount and form satisfactory to the Society;
- (f) undertake to observe the standards of professional conduct which are accepted by the legal profession in Ontario including those set out in the Society's Rules of Professional Conduct;
- (g) undertake to submit to the jurisdiction of the Law Society of Upper Canada in regard to their practice in Ontario.

The limitations which apply to the activities of ***foreign legal consultants*** in Ontario are as follows:

- (a) they may not hold themselves out as qualified to act as a member of the Law Society of Upper Canada;
- (b) they may not represent clients in any Court or before any public administrative body;
- (c) they may not provide advice on matters of Ontario law (which for purposes of these rules includes Canadian law applicable in Ontario);
- (d) they may not prepare or participate in preparing any document or instrument which is or which may be governed by the laws of Ontario unless the client has retained a member of the Law Society of Upper Canada who also participates in the preparation of such document or instrument and reviews the final draft.

An application to be licensed as a ***foreign legal consultant*** should also include the following:

- (a) a Certificate of Good Standing from the jurisdiction of which the applicant is a member;
- (b) a letter from the law firm with which the applicant is employed or associated confirming employment of or association with the applicant;
- (c) a curriculum vitae of the applicant;
- (d) a certified and true COPY of the insurance Policy covering the law firm with which the applicant is employed or associated;
- (e) an undertaking, provided by the applicant's law firm, to notify the Law Society of Upper Canada if the insurance policy is cancelled or if there is any material change in policy which would affect the coverage of the ***foreign legal consultant***;
- (f) an undertaking, provided by the applicant's law firm, to notify the Law Society if the applicant ceases to be employed by or associated with them;

- (g) an undertaking, provided by the applicant, to notify the Law Society if they cease to be an employee of or associated with the law firm under which they are applying;
- (h) an undertaking, provided by the applicant, to restrict their practice as a ***foreign legal consultant*** to advising on the law of the foreign jurisdiction of which they are a member.

The cost of processing the application and the license fee is still under review.

Applications should be addressed to the attention of the Deputy Secretary, Margaret J. Angevine. The completed application will be placed before the Admissions Committee for their consideration.

6. Barreau du Québec

The Barreau du Québec adopted the Interjurisdictional Practice Protocol in March 1996. No legislation has yet been adopted to allow the recognition of foreign legal consultants within Québec.

Le Barreau du Québec a adopté le Protocole sur l'exercice interjuridictionnel du droit en 1996. Aucune législation n'a été adoptée pour permettre la reconnaissance des conseillers juridiques étrangers au Québec.

7. Chambre des notaires du Québec

The Chambre des notaires du Québec adopted the Interjurisdictional Practice Protocol in February 1994. No legislation has yet been adopted to allow the recognition of foreign legal consultants within Québec.

La Chambre des notaires du Québec a adopté le Protocole sur l'exercice interjuridictionnel du droit en février 1994. Aucune législation n'a été adoptée pour permettre la reconnaissance des conseillers juridiques étrangers au Québec.

8. The Law Society of New Brunswick / Barreau du Nouveau-Brunswick

The 1997 amendments to the Law Society Act of New Brunswick give the authority to the Law Society to enact rules with respect to the recognition of foreign legal consultants within New Brunswick.

Les modifications à la Loi sur le Barreau permettent au barreau d'établir des règles sur la reconnaissance des conseillers juridiques étrangers au Nouveau-Brunswick. Le Barreau du

Nouveau-Brunswick établira bientôt un groupe de travail pour rédiger les règles portant sur les conseillers juridiques étrangers.

Hereunder is provided / *Ci-dessous se trouvent:*

Law Society Act, 1996 / *Loi sur la Société du Barreau, 1996*
Definition of member and Section 33(5) /
Définition de membre et l'article 33(5)

LAW SOCIETY OF NEW BRUNSWICK LAW SOCIETY ACT, 1996

S.N.B. 1996, chapter 89
Assented to April 25, 1996

Definitions

“member” means, unless otherwise indicated, a barrister and solicitor registered as a practising or non-practising member under subsection 30(4) and, for the purpose of Parts 10, 11, 12 and 14, includes ... *c)* a person authorized to practise in New Brunswick the law of a country other than Canada, or of an internal jurisdiction of that country, under subsection 33(5),

33(5) Council may permit an individual who is qualified to practise law in a country other than Canada or in an internal jurisdiction of that country, who has complied and continues to comply with rules made under subparagraph 17(2)(x)(ii), to practise in New Brunswick 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 Council.

BARREAU DU NOUVEAU-BRUNSWICK LOI DE 1996 SUR LE BARREAU

L.N.-B. 1996, chapitre 89
Sanctionnée le 25 avril 1996

Définitions

«membre» désigne, sauf indication contraire, tout avocat-procureur inscrit comme membre praticien ou non-praticien en vertu du paragraphe 30(4), y compris, pour l'application des parties 10, 11, 12 et 14 :
... *c)* une personne autorisée à exercer au Nouveau-Brunswick, en vertu du paragraphe 33(5), le droit d'un pays étranger ou d'une des collectivités territoriales qui le composent,

33(5) Le Conseil peut autoriser un particulier qui a qualité pour exercer dans un pays étranger ou dans une des collectivités territoriales qui le composent à exercer le droit de ce pays ou de cette collectivité au Nouveau-Brunswick tant et aussi longtemps qu'elle se conforme aux règles prises en vertu du sous-alinéa 17(2)x)(ii), sous réserve des droits à payer et des autres conditions qu'il lui impose.

9. Nova Scotia Barristers' Society

The topic of foreign legal consultants for the Nova Scotia Barristers' Society is dealt with in Section 37C and in Part 8 of the Regulations of the Nova Scotia Barristers' Society.

Le sujet des conseillers juridiques étrangers est traité à la section 37C et la partie 8 des règlements du Nova Scotia Barristers' Society.

Hereunder is provided / *Ci-dessous se trouvent:*

Regulations, Nova Scotia Barristers' Society
Section 37C(1) to 37(C)14 - Foreign Legal Consultants
Part B - Section 51(8) - Foreign Legal Consultant Fees

Regulations - Nova Scotia Barristers' Society

Foreign Legal Consultants

Interpretation

37C (1) In this Regulation,

- (a) "applicant" means an application to practise as a **foreign legal consultant**;
- (b) "committee" means the Qualifications Committee; and
- (c) "**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

37C (2) A person may apply to the Committee for approval to act as a **foreign legal consultant** in the Province upon

- (a) filing a completed application in the form approved by the Committee; and
- (b) payment of the fee prescribed by Council.

Requirements of Applicant

37C (3) The applicant may be approved to act as a **foreign legal consultant** if the applicant satisfies the Committee that the applicant

- (a) is a member in good standing of the legal profession of his or her home country or in one of its internal jurisdictions;
- (b) is a person of good moral character and a fit and proper person to practise law in the Province;
- (c) has practised the law of his or her home country or one of its internal jurisdictions for at least three 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 provided to the Committee 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 Act, the Regulations and the Legal Ethics and Professional Conduct Handbook, and
 - (iii) notify the Committee promptly if he or she fails to complete satisfactorily whatever continuing legal education program is required by 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 the 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 the amount prescribed by Council, for the purpose of reimbursing persons who sustain a pecuniary loss as a result of the misappropriation or 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.

Compliance with Conditions

37C (4) The applicant must comply with any conditions prescribed by the Committee or Council.

Period of Approval

37C (5) Subject to subregulation (6), approval under subregulation (3) is valid from the issue date shown on it to the following thirtieth day of June.

Approval Ceases to be Valid

37C (6) Notwithstanding subregulation (5), the approval ceases to be valid if the foreign legal consultant

- (a) is suspended as a result of proceedings under the Act; or
- (b) ceases to comply with any of the requirements of subregulations (3) or (4).

Qualification to Act as a Foreign Legal Consultant

37C (7) Subject to subregulation (8), a person may act as a foreign legal consultant in the Province only if he or she has obtained approval under this Regulation.

Dual Qualification

37C (8) 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 approval pursuant to this Regulation 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

37C (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 state that he or she is not a member of the Society.

Renewal of Application

37C (10) A foreign legal consultant who intends to continue to act as such in the Province shall, before his or her approval expires, apply to the Committee for a renewal of the application.

Requirements of Renewal

37C (11) A renewal application shall include

- (a) a completed renewal application in a form approved by the Committee;
- (b) evidence satisfactory to the Committee that the applicant continues to comply with the requirements set out in subregulations (3) and (4); and
- (c) the renewal fee fixed by Council.

Approval of Renewal

37C (12) The Committee may approve a renewal application for a foreign legal consultant who has complied with this Regulation and any conditions prescribed by the Committee or Council.

Period of Renewal

37C (13) Subject to subregulation (14), a renewal application issued pursuant to subregulation (12) is valid for one year.

Application of Subregulation (6)

37C (14) Subregulation (6) applies to an application which has been renewed pursuant to subregulation (12).

PART 8 - FEES

Foreign Legal Consultant Fees

- 51 (8) The following fees shall be payable to the Society for,
- (a) application fee under Regulation 37C(2)(b) \$ 500.00
 - (b) renewal of application under Regulation 37C(11)(c) \$ 100.00

10. The Law Society of Prince Edward Island

In June 1996, the delegates at the Annual General Meeting of the Law Society of Prince Edward Island adopted regulations on foreign legal consultants. The topic of Foreign Legal Consultants for the Law Society of Prince Edward Island is dealt with in Section 21.3 of their Regulations. The fee for an FLC has been set at \$500 and the application form has been approved by Council.

En juin 1996, les délégués de l'assemblée annuelle du barreau de l'Île-du-Prince-Édouard ont adopté des règlements portant sur les conseillers juridiques étrangers. Les conseillers juridiques étrangers sont alors traités à la section 21.3 des règlements du Barreau. La cotisation d'un CJÉ est de \$500 et le formulaire de demande a été approuvé par le conseil du barreau.

Hereunder is provided / *Ci-dessous se trouvent:*

Regulations, The Law Society of Prince Edward Island
Section 21.3- Foreign Legal Consultants

Regulations - The Law Society of Prince Edward Island

Foreign Legal Consultants

Interpretation:

21.3 (1) In this Regulation,

- (a) "applicant" means an individual who submits an application to practice as a foreign legal consultant;
- (b) "***foreign legal consultant***" means a person qualified to practice law in a country other than Canada or in an internal jurisdiction of that country, who practices in the Province the law of that country or internal jurisdiction, as the case may be.

Application:

21.3 (2) A person may apply to the Council for approval to act as a ***foreign legal consultant*** in the Province upon

- (a) filing a completed application in the form approved by the Council; and

- (b) payment of the fee prescribed by Council.

Requirements of Applicant:

21.3 (3) The applicant may be approved to act as a foreign legal consultant if the applicant satisfies the Council that the applicant

- (a) is a member in good standing of the legal profession of his or her home country or in one of its internal jurisdictions;
- (b) is a person of good moral character and a fit and proper person to practice as a foreign legal consultant in the Province;
- (c) has practiced the law of his or her home country or one of its internal jurisdictions for at least three 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 provided to the Council 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 Act, the Regulations and the Code of Professional Conduct, and
 - (iii) notify the Council promptly if he or she fails to complete satisfactorily whatever continuing legal education program is required by 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 the services rendered by 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, and in the amount prescribed by Council, for the purpose of reimbursing persons who sustain a pecuniary loss as a result of the misappropriation or conversion by the foreign legal consultant of money or other real property entrusted to or received by the consultant in his or her capacity as a foreign legal consultant in the Province.

Compliance with Conditions:

21.3 (4) The applicant must comply with any conditions prescribed by the Council.

Period of Approval:

21.3 (5) Subject to subsection (6), approval under subsection (3) is valid from the issue date shown on it to the following thirtieth day of June.

Approval Ceases to be Valid:

- 21.3 (6) Notwithstanding subsection (5), the approval ceases to be valid if the foreign legal consultant
- (a) is suspended as a result of proceedings under the Act or Regulations; or
 - (b) ceases to comply with any of the requirements of subsections (3) or (4).

Qualification to Act as a Foreign Legal Consultant:

21.3 (7) Subject to subsection (8), a person may act as a foreign legal consultant in the Province only if he or she has obtained approval under this Regulation.

Dual Qualification:

21.3 (8) A member of the Society who is also qualified to practice law in another country or in one of its internal jurisdictions need not obtain approval pursuant to this Regulation 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:

21.3 (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 practice law, and the professional title used in that country or internal jurisdiction; and
- (c) shall state that he or she is not a member of the Society.

Renewal of Application:

21.3 (10) A **foreign legal consultant** who intends to continue to act as such in the Province shall, before his or her approval expires, apply to the Council for a renewal of the application.

Requirements for Renewal:

21.3 (11) A renewal application shall include

- (a) a completed renewal application in a form approved by the Council;
- (b) evidence satisfactory to the Council that the applicant continues to comply with the requirements set out in subsections (3) and (4); and
- (c) the renewal fee fixed by Council.

Approval of Renewal:

21.3 (12) The Council may approve a renewal application for a **foreign legal consultant** who has complied with this Regulation and any conditions prescribed by the Council.

Period of Renewal:

21.3 (13) Subject to subsection (14), a renewal application issued pursuant to subsection (12) is valid for one year.

Application of Subsection (6):

21.3 (14) Subsection (6) applies to an application which has been renewed pursuant to subsection (12).

11. The Law Society of Newfoundland

The Law Society of Newfoundland will soon propose amendments to its act to implement the Protocol of the Federation and provisions for the recognition of foreign legal consultants within Newfoundland.

Le Law Society of Newfoundland proposera bientôt des modifications à la loi du Barreau de Terre-Neuve afin de permettre l'adoption du Protocole sur l'exercice interjuridictionnel du droit de la Fédération et la reconnaissance des conseillers juridiques étrangers.

12. Law Society of the Northwest Territories & The Law Society of Yukon

The Law Society of the Northwest Territories and the Law Society of Yukon do not yet recognize foreign legal consultants to practice as such within their jurisdiction. Both societies did not adopt the Interjurisdictional Practice Protocol of the Federation.

Le Barreau des Territoires du Nord-Ouest et le Barreau du Yukon ne reconnaissent pas les conseillers juridiques étrangers. Ces deux barreaux n'ont pas adopté le Protocole sur l'exercice interjuridictionnel du droit de la Fédération.

13. Federation of Law Societies of Canada

In February 1994, 10 of the 13 governing bodies of the legal profession in Canada adopted the Interjurisdictional Practice Protocol of the Federation of Law Societies of Canada, that is all Law Societies to the exception of the Barreau du Québec, the Law Society of the Northwest Territories and the Law Society of Yukon . In March 1996, the Barreau du Québec adopted the Protocol.

As this research document shows, most Law Societies do now recognize foreign legal consultants or are working towards amending its legislation to allow such recognition.

Appendix 3 of the Protocol deals with the topic of foreign legal consultants.

Hereunder is provided:

Interjurisdictional Practice Protocol

Appendix 3 - Foreign Legal Consultants

Appendix 3 - Foreign Legal Consultants Interjurisdictional Practice Protocol

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).

14. Fédération des ordres professionnels de juristes du Canada

En février 1994, 10 des 13 ordres professionnels de juristes au Canada adoptaient le Protocole sur l'exercice interjuridictionnel du droit de la Fédération des professions juridiques du Canada. En mars 1996, le Barreau du Québec a adopté le Protocole. Les barreaux des Territoires du Nord-Ouest et du

Yukon n'ont pas adopté le Protocole.

L'annexe 3 du Protocole traite des conseillers juridiques étrangers.

Ce document présente le texte suivant:

Protocole sur l'exercice interjuridictionnel du droit
Annexe 3 - Conseillers juridiques étrangers

Annexe 3 - Conseillers juridiques étrangers

Protocole sur l'exercice interjuridictionnel du droit

Modifications législatives

- (1) Les membres du Bureau peuvent permettre à une personne habile à pratiquer le droit dans un pays autre que le Canada, ou dans une juridiction interne de cet autre pays, de pratiquer dans la province le droit de ce pays ou de cette juridiction interne, selon le cas, sous réserve des conditions fixées par les membres du Bureau, notamment le paiement d'un droit.
- (2) Les dispositions de la présente Loi et les [règles de la Société] concernant la compétence, la discipline et la responsabilité financière des membres s'appliquent, le cas échéant et avec les adaptations nécessaires, à la personne à qui est conférée, en vertu du paragraphe (1), la permission d'exercer dans la province en qualité de ***conseiller juridique étranger***; les membres du Bureau ne sont toutefois pas investis du pouvoir de rayer cette personne du tableau de l'ordre de la corporation professionnelle.

Règle de la Société

Conseillers juridiques étrangers

- (1) La définition suivante s'applique à la présente Règle :
« ***conseiller juridique étranger*** » Personne habile à pratiquer le droit dans un pays autre que le Canada, ou dans une juridiction interne de cet autre pays, qui pratique dans la province le droit de ce pays ou de cette juridiction interne, selon le cas.

Demande de permis

- (2) La personne qui veut obtenir de la Société un permis l'autorisant à exercer dans la province en qualité de ***conseiller juridique étranger*** doit lui remettre :
 - (a) une demande de permis dûment remplie et dont la forme est approuvée par les membres du Bureau ;
 - (b) le droit fixé par les membres du Bureau pour l'obtention du permis.

Délivrance du permis

- (3) La Société peut délivrer à la personne qui en fait la demande un permis l'autorisant à exercer en qualité de ***conseiller juridique étranger***, si elle est convaincue que cette personne:
 - (a) est membre en règle du barreau dans son pays d'origine ou dans une juridiction interne de celui-ci ;
 - (b) a une bonne réputation ;
 - (c) a pratiqué le droit dans son pays d'origine ou dans une juridiction interne de celui-ci pendant au moins 3 années complètes, ou s'engage par écrit à n'exercer dans la province en qualité de

- conseiller juridique étranger que sous la surveillance directe d'un conseiller juridique étranger de ce pays ou de cette juridiction interne qui, lui, satisfait à l'exigence des 3 années de pratique ;
- (d) a remis à la Société un document dans lequel elle s'engage par écrit :
- (i) à ne pas accepter, détenir ni transférer des fonds qui, si un membre les acceptait, les détenait ou les transférerait, constitueraient des fonds en fiducie, et à ne pas s'occuper de fonds qui constitueraient des fonds en fiducie si un membre s'en occupait ;
 - (ii) à se soumettre à la compétence de la Société et à se conformer à la [Loi sur le Barreau], aux règlements, aux Règles de la Société et au code de déontologie ; et
 - (iii) à aviser sans délai la Société s'il ne complète pas d'une manière satisfaisante tout programme de formation juridique permanente que doivent suivre les membres de son pays d'origine ou de la juridiction interne de ce pays ;
- (e) a une assurance-responsabilité professionnelle ou encore un cautionnement ou autre garantie
- (i) dont le montant et la forme sont raisonnablement comparables à la garantie établie par la Société dans le cadre de son programme obligatoire ; et
 - (ii) qui s'applique spécifiquement aux services rendus par le conseiller juridique étranger lorsqu'il exerce en cette qualité dans la province ;
- (f) participe à un programme ou à une assurance ou autre garantie agréée par la Société, d'un montant d'au moins [\$ (déterminé par chaque corporation professionnelle)], pour l'indemnisation des personnes qui subissent une perte financière par suite d'un détournement de fonds commis par le conseiller juridique étranger à l'égard d'argent ou d'autres biens qui lui sont confiés ou remis en sa qualité de conseiller juridique étranger dans la province ;

et la Société peut, conformément au paragraphe (4), assortir le permis de certaines conditions.

- (4) Le Comité [de la qualification professionnelle] peut fixer les conditions susceptibles d'être liées aux permis délivrés ou renouvelés en vertu de la présente Règle.
- (5) Sous réserve des dispositions du paragraphe (6), tout permis délivré en vertu du paragraphe (3) est valide à compter de la date de délivrance qui y figure, et jusqu'à la même date l'année suivante.
- (6) En dépit du paragraphe (5), le permis cesse d'être valide dans l'un ou l'autre des cas suivants :
- a) le conseiller juridique étranger est suspendu par suite de procédures engagées en conformité avec la [Loi sur le Barreau] ;
 - b) il cesse de se conformer à l'une ou l'autre des exigences établies aux paragraphes (3) et (4).

Habilité à exercer en qualité de conseiller juridique étranger

(7) Sous réserve des dispositions du paragraphe (8), nulle personne n'est habile à exercer en qualité de conseiller juridique dans la province si elle n'est pas titulaire d'un permis valide délivré en vertu de la présente règle.

Membres de la Société habiles à pratiquer le droit à l'étranger

(8) Sous réserve du paragraphe (4) de l'Annexe 4, les membres de la Société qui sont également habiles à pratiquer le droit dans un autre pays ou dans une juridiction interne de celui-ci ne sont pas tenus d'obtenir un permis pour agir en qualité de conseillers juridiques étrangers dans la province, à la condition que leurs activités en qualité de conseiller juridique fassent l'objet d'une assurance dont le montant et la forme sont au moins raisonnablement comparables à la protection établie par la Société dans le cadre de son programme obligatoire.

Publicité et marketing

(9) Le **conseiller juridique étranger** qui fait de la publicité dans la province ou y exerce quelque activité de marketing doit :

- (a) utiliser le terme « **conseiller juridique étranger** » ;
- (b) mentionner le pays, ou la juridiction interne, dans lequel il est habile à pratiquer le droit, ainsi que le titre professionnel utilisé dans ce pays ou cette juridiction interne ;
- (c) éviter de recourir à quelque désignation ou de faire quelque déclaration raisonnablement susceptible d'amener une personne à conclure qu'il est membre de la Société.

Renouvellement du permis

(10) Le **conseiller juridique étranger** qui a l'intention de continuer à agir en cette qualité dans la province doit, avant l'expiration de son permis, en demander le renouvellement à la Société.

(11) La demande de renouvellement doit comporter les éléments suivants :

- (a) une demande de renouvellement de permis dûment remplie, dont la forme est agréée par les membres du Bureau ;
- (b) une preuve établissant d'une manière jugée satisfaisante par la Société que la personne qui présente la demande se conforme toujours aux exigences établies aux paragraphes (3) et (4) ; et
- (c) le droit fixé par les membres du Bureau pour les renouvellements.

(12) La Société peut renouveler le permis du conseiller juridique qui s'est conformé aux exigences de la Loi et des présentes Règles.

(13) Sous réserve des dispositions du paragraphe (14), le renouvellement délivré en vertu du paragraphe (12) est valide pendant une année.

(14) Les dispositions du paragraphe (6) s'appliquent à tout permis renouvelé en vertu du paragraphe (12).
