



LAW SOCIETY OF MANITOBA

INSTRUCTIONS: FOREIGN LEGAL CONSULTANTS

1. INTRODUCTION

The Law Society of Manitoba is the governing body for the legal profession in Manitoba. The Society's statutory mandate is derived from *The Legal Profession Act*, S.M. 2002, c.44. There are also a set of Law Society Rules and a Code of Professional Conduct.

Section 22 of the Act states:

- 22 *The benchers may do one or more of the following:*
- (a) *allow lawyers or classes of lawyers who are authorized to practise law in a foreign jurisdiction to practise law in Manitoba;*
 - (b) *impose conditions or restrictions on their practice of law in Manitoba;*
 - (c) *make rules about their practice of law in Manitoba, including rules that*
 - (i) *set a fee for the permission to practise law in Manitoba,*
 - (ii) *set conditions, restrictions, rights, privileges, standards or duties that apply to them and their practice of law in Manitoba,*
 - (iii) *extend or limit the application of provisions of this Act and the rules to them,*
 - (iv) *provide for the release of information about a lawyer or student to the governing body of any jurisdiction in which he or she has sought or is seeking the right to practise law.*

Division 4 of Part 3 of the Law Society Rules (attached) provides for the issuance of an annually-renewable permit to a qualified foreign legal consultant.

The purpose of this information package is to explain the role of foreign legal consultants in Manitoba and the requirements for obtaining a permit.

2. DEFINITION OF FOREIGN LEGAL CONSULTANT

Rule 3-32 defines a foreign legal consultant as a person who practices in Manitoba the law of a foreign jurisdiction in which the person is entitled to practice law. The Act defines foreign jurisdiction as a jurisdiction outside of Manitoba in which the legal profession is regulated.

3. PERMISSION TO ACT AS A FOREIGN LEGAL CONSULTANT

A person with foreign legal qualifications who wishes to give legal advice in Manitoba respecting the laws of his or her home jurisdiction must first obtain from the Law Society a permit to act as a foreign legal consultant.

A permit is renewable annually and a foreign legal consultant may act as such only while the permit remains valid.

A person who acts as a foreign legal consultant, or holds himself/herself out as such, without a valid permit, is engaged in the unauthorized practice of law and is liable to prosecution or to injunction proceedings by the Law Society.

4. DUAL QUALIFICATION

A member of the Law Society who is also qualified to practice law in a foreign jurisdiction need not obtain a permit to act as a foreign legal consultant if his or her professional liability as a foreign legal consultant is insured in a form and amount which is at least reasonably comparable with that maintained by the Law Society's Professional Liability Claims Fund.

5. APPLYING FOR A PERMIT

A person wishing to act as a foreign legal consultant in Manitoba must make written application to the Law Society by completing the attached Application form and providing any other relevant information and documents.

(a) Residency in Manitoba

A foreign legal consultant is not required to reside in Manitoba. A person who wishes to act as a foreign legal consultant on a full-time or part-time basis is permitted to apply for a permit. Additionally, a person who wishes to come to Manitoba infrequently or even once, to advise about the law of his/her home jurisdiction must first obtain a permit to act as a foreign legal consultant.

(b) Qualifications to Become a Foreign Legal Consultant

Law Society Rule 3-34 sets out the requirements for qualification to act as a foreign legal consultant. The onus is on the applicant to satisfy the society that the requirements have been met.

- (i) good standing – the applicant must provide documentary evidence that he or she is a member in good standing of the legal profession in the foreign jurisdiction in which he or she is entitled to practice law.

In most cases an official certificate of good standing issued by the governing body in the applicant's home jurisdiction will be adequate.

A foreign legal consultant has a continuing obligation to maintain his or her good standing in the legal profession in the foreign jurisdiction in which the applicant is

entitled to practice law as long as he or she holds a permit to act as a consultant. If the consultant ceases, for any reason, to be in good standing, the permit ceases to be valid [Rule 3-38].

A foreign legal consultant who is issued a permit has a continuing obligation to inform the Law Society immediately if he or she ceases to be a member in good standing of the legal profession in his or her home jurisdiction.

- ii) good character and repute – the applicant must file two certificates of character (Form 1, attached) completed by members of the Law Society of Manitoba or of the legal profession in a jurisdiction in which the applicant is entitled to practice law, attesting to the applicant’s good character and repute.
- iii) three years of practice – the applicant must have practised the law of his or her home jurisdiction for at least three complete years, or undertake in writing to work while acting as a foreign legal consultant, only under the direct supervision of a foreign legal consultant entitled to practice in that home jurisdiction who has satisfied the three year practice requirement.
- iv) undertaking – the applicant must undertake that, if permitted to act as a foreign legal consultant in Manitoba, he or she will submit to the jurisdiction of The Law Society of Manitoba and comply with *The Legal Profession Act*, the Law Society Rules, and the Code of Professional Conduct.
- v) professional liability insurance – Law Society Rule 3-34(e) requires that a foreign legal consultant:
 - (e) *carries professional liability insurance or a bond, indemnity or other security*
 - (i) *that is reasonably comparable in coverage and amount to that maintained by the society, and*
 - (ii) *extends to services rendered by the foreign legal consultant while acting as such.*

In Manitoba every member of the Law Society must participate in a compulsory liability insurance program which provides coverage in the amount of \$1 million per claim with an aggregate coverage limit of \$2 million per lawyer per year. The program provides coverage for errors and omissions made by members in the course of their providing professional services for others in their capacity as a member of The Law Society of Manitoba.

A person applying to act as a foreign legal consultant must satisfy the Society that he or she is insured, or carries a bond, indemnity or other security which is comparable in form and amount to the Manitoba program, and which extends to services rendered by the foreign legal consultant while acting as such in Manitoba.

A foreign legal consultant has a continuing obligation to maintain professional liability insurance as long as he or she holds a permit to act as a consultant. If the insurance lapses or is cancelled, the permit ceases to be valid [Rule 3-38(b)].

A foreign legal consultant who is issued a permit has a continuing obligation to inform the Law Society of the cancellation of, or any significant change to, his or her liability insurance coverage.

- vi) fidelity bond – every member of the Law Society of Manitoba is required to contribute to a Reimbursement Fund, established “for the purpose of compensating claimants who have sustained pecuniary losses because of a member’s or law corporation’s misappropriation or wrongful conversion of the claimant’s money or property” [*Legal Profession Act*, s. 46(2)].

Because foreign legal consultants are not members of the Law Society of Manitoba, the Reimbursement Fund can not be used to reimburse clients who suffer a loss because of a consultant’s misappropriation or wrongful conversion.

Instead, every person applying to be a foreign legal consultant must satisfy the Society that he or she participates in an insurance or reimbursement program or provide a fidelity bond or other security satisfactory to the Society, for the purpose of reimbursement in whole or in part of persons sustaining pecuniary loss by reason 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 Manitoba.

The Reimbursement Fund established by The Law Society of Manitoba for its members provides for coverage to a maximum of \$10 million per policy year.

A foreign legal consultant has a continuing obligation to maintain the fidelity bond or other security described above as long as he or she holds a permit to act as a consultant. If the bond lapses or is cancelled, the permit ceases to be valid [Rule 3-38(b)].

A foreign legal consultant who is issued a permit has a continuing obligation to inform the Law Society of the cancellation of, or any significant change to, his or her fidelity bond or other security.

(c) Translation of Documents

If the documents which are required to be submitted with the Application are, in their original form, in a language other than English, the applicant must submit with them an English translation authenticated by a qualified translator.

(d) Permit Conditions

The Society may fix conditions that may be attached to permits issued to foreign legal consultants.

6. DURATION OF A PERMIT

A permit issued to a foreign legal consultant is, subject to exceptions, valid from the issue date shown on it until the last day of the same calendar month in the next year.

The two exceptions are that 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 imposed upon him or her under Rule 3-34(b).

7. ACTIVITIES IN WHICH A FOREIGN LEGAL CONSULTANT MAY ENGAGE

A foreign legal consultant holding a valid permit may only give legal advice respecting the law of the foreign jurisdiction in which the person is entitled to practice law. A foreign legal consultant is not permitted, while acting as such in the Province, to engage in any other aspects of the practice of Manitoba law.

Section 20(2) of *The Legal Profession Act* states that except as permitted by or under this Act or another Act, no person shall:

- (a) carry on the practice of law;
- (b) appear as a lawyer before any court or before a Justice of the Peace;
- (c) sue out any writ or process or solicit, commence, carry on or defend any action or proceeding before a court; or
- (d) attempt to do any of the things mentioned in clauses (a) to (c);

Section 20(3) of *The Legal Profession Act* states that a person who does any of the following, directly or indirectly, for or in the expectation of a fee or reward is deemed to be carrying on the practice of law:

- (a) draws, revises or settles any of the following documents:
 - (i) a document relating to real or personal property;
 - (ii) a document for use in a proceeding, whether judicial or extra-judicial;
 - (iii) a document relating to the incorporation, administration, organization, re-organization, dissolution or winding-up of a corporation,

- (iv) a will, deed, settlement, trust deed, or power of attorney, or any document relating to the guardianship or the estate of a person;
- (v) a document relating to proceedings under any statute of Canada or of Manitoba;
- (b) negotiates or solicits the right to negotiate for the settlement of, or settles, a claim for loss or damage founded in tort;
- (c) agrees to provide the services of a practising lawyer to any person, unless the agreement is part of, or is made under
 - (i) a prepaid legal services plan,
 - (ii) a liability insurance policy, or
 - (iii) a collective agreement or collective bargaining relationship;
- (d) gives legal advice.

Section 20(4) of *The Legal Profession Act* states that the Act does not prohibit:

- (a) a public officer acting within the scope of his or her authority as a public officer;
- (b) a notary public exercising his or her powers as a notary public;
- (c) a person preparing a document for his or her own use or to which he or she is a party;
- (d) a person acting on his or her own behalf in an action or a proceeding;
- (e) an officer or employee of an incorporated or unincorporated organization preparing a document for the use of the organization or to which it is a party.

Consequently, a foreign legal consultant is not permitted to appear as counsel on behalf of a client before any Manitoba or federal court or administrative tribunal, is not permitted to advise a client about the law of Manitoba, and is not permitted to draft, revise or settle documents, or perform any of the other functions described in s. 20(3) of *The Legal Profession Act*, insofar as they relate to the practice of Manitoba law.

A foreign legal consultant who engages in any activity encompassed by the definition of practice in s. 20(3) of the Act, other than the giving of legal advice respecting the laws of the foreign jurisdiction in respect of which he or she is entitled to practice, is engaged in the unauthorized practice of law and is liable for prosecution or to injunction proceedings by the Law Society.

8. BOOKS, RECORDS AND ACCOUNTS

A foreign legal consultant must 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 [Rule 3-34(d)(i)].

9. MARKETING OF LEGAL SERVICES

Rule 3-41 provides that a foreign legal consultant, when engaging in advertising or any other form of marketing activity in Manitoba,

- (a) must use the term “foreign legal consultant”;
- (b) must state the foreign jurisdiction in which he or she is entitled to practice law, and the professional title used in that jurisdiction; and
- (c) unless he or she is a member, must not use any designation or make any representation from which a member of the public might reasonably conclude that he or she is a member.

A foreign legal consultant who is affiliated with a Manitoba law firm may be shown on the firm’s letterhead if he or she is clearly designated as a foreign legal consultant.

A foreign legal consultant who advertises, must also comply with Law Society Rule 5-114(1) which states that members or law firm may advertise, provided the advertising:

- (a) is demonstrably true and accurate;
- (b) is not misleading or deceptive or likely to mislead or deceive;
- (c) is of a dignified nature and otherwise such as not to bring the member or the profession into disrepute;
- (d) does not claim or imply any superiority of the advertising member or law firm over any other member of the society; or
- (e) of a law corporation is done under the name of the corporation.

A foreign legal consultant must also comply with Law Society Rule 5-114(2) which provides that a member or law firm may advertise a preferred area or areas of practice provided the advertisement does not contain a claim, either directly or indirectly, that the advertising member or law firm is a specialist or expert.

10. FEES

A non-refundable fee of \$500.00 plus G.S.T. is payable at the time of application for a permit to be a foreign legal consultant.

The annual renewal fee is \$100.00 plus G.S.T.

11. MORE INFORMATION

When applying for a permit to act as a foreign legal consultant, or for more information, please write to:

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