



Law Society of Alberta  
**National Mobility FAQs**  
Visiting Lawyers

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## General

### 1. What kind of work brings me under the oversight of the Law Society of Alberta?

*“Provide legal services” means to engage in the practice of law*

*(a) physically in Alberta, except with respect to the law of a home jurisdiction, or*

*(b) with respect to the law of Alberta physically in any jurisdiction,*

*and includes to provide legal services respecting federal jurisdiction in Alberta.*

*Reference: Rule 46.01*

- This means that, for the purposes of oversight, you could be providing legal services in relation to Alberta whether or not you are physically in Alberta. For example, if you are giving legal advice with respect to the laws of Alberta in person, on the telephone, by email or through correspondence from a province outside of Alberta you are considered to be practising law in Alberta. You must therefore keep track of all of these activities.
- This also means that you are providing legal services in relation to Alberta if you do so with respect to the laws of Canada applicable to Alberta. So for example, lawyers who perform professional services as a barrister or solicitor with respect to the laws of Canada applicable to Alberta will be subject to the oversight of the Law Society of Alberta.
- Lawyers employed as in-house counsel who provide legal services in relation to Alberta on an occasional basis in the course of their employment will also be considered to be practising law for the purposes of these Rules.
- There are exceptions related to employees of the Judge Advocate General (Rule 72.2(5)) and proceedings before federal courts and tribunals. (See Rule 72.2(6))

## Temporary Membership

### Requirements for All Visiting Lawyers (with or without a permit)

#### 1. In what circumstances can I provide legal services in relation to Alberta without becoming a member of the Law Society of Alberta?

You may provide legal services in relation to Alberta without becoming a member of the Law Society of Alberta if you:

- are a member of another law society in Canada
- are entitled to practise law in that jurisdiction

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- meet the liability insurance requirements set out in the rules (which are generally met if you are insured as required by an NMA or IJP governing body)
  - meet the defalcation compensation coverage requirements set out in the Rules (which are generally met if you have the defalcation coverage required by an NMA or IJP governing body)
  - do not develop an economic nexus in Alberta
  - either apply for and obtain a permit, or ensure that you are permitted to provide the requisite legal services without a permit

## 2. What does 'entitled to practice' mean?

'Entitled to practice law' means allowed, under all of the legislation and regulation of a home jurisdiction, to engage in the practice of law in the home jurisdiction, without meeting any further requirements (Rule 46.01)

## 3. What rules apply to how I handle trust funds?

A visiting lawyer must not open or maintain a trust account in Alberta and must

(a) promptly remit funds received in trust to the visitor's lawyer's trust account in the home jurisdiction, or

(b) ensure that trust funds received are handled

(i) by a member of the Law Society of Alberta entitled to practise law in Alberta in a trust account controlled by that member of the Society, and

(ii) in accordance with the *Legal Profession Act* and the Rules of the Law Society of Alberta.

Reference: Rule 72.1(4)

## 4. Are there any restrictions on how I advertise?

Yes. A visiting lawyer shall not hold out nor allow him or herself to be held out as willing or qualified to practise law in Alberta, except as a visiting lawyer.

## 5. Am I bound by Alberta's Code of Conduct, Rules and Legal Profession Act while providing legal services in relation to Alberta?

Yes. This includes the duty to self-report to the Law Society of Alberta.

(1) If you are charged with

(a) an indictable offence under any Act of Parliament,

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- (b) an offence under any Act of Parliament where the offence was prosecutable either as an indictable offence or as a summary conviction offence,
- (c) a summary conviction offence under the Income Tax Act, the Criminal Code, the Narcotic Control Act or the Controlled Drugs and Substances Act, the Food and Drugs Act of Canada or the Income Tax Act or Securities Act of any province of Canada,
- (d) a summary conviction offence under any other law in force in Canada punishable by a fine, if the maximum fine for the offence was then at least \$25,000,
- (e) an offence committed outside Canada and similar to any of the kinds of offences described in clauses (a) to (d), or
- (f) a disciplinary offence in any jurisdiction in which the individual is subject to the regulation of a governing body of the legal profession

this includes an obligation to

- (i) within a reasonable time after the charge is laid give a written notice to the Executive Director containing the particulars of the charge, and
- (ii) forthwith notify the Executive Director of the disposition of the charge and any agreement arising out of the charge.
- (2) You must also notify the Executive Director of any order requiring that you serve a term of imprisonment, including a conditional or intermittent sentence of imprisonment.
- (3) You must also forthwith notify the Executive Director of any suspension, investigation, supervision, undertaking, conditions or similar processes including but not limited to Conduct, Audit, Practice Review or competence related proceedings to which you are subject by direction of a governing body of the legal profession in any jurisdiction.

Reference: Rules 72.1(1), 73(1) and 105.

## **6. Can I call the Practice Advisors for ethical, practice and practice management advice while providing legal services in Alberta?**

Yes. In fact, you are encouraged to do so. Please see the Practice Advisors or Equity Ombudsperson pages.

## **7. What circumstances amount to an economic nexus in Alberta?**

In general, an economic nexus is established by actions inconsistent with a temporary basis for providing legal services. This includes, but is not limited to, doing any of the following in Alberta

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- (a) providing legal services beyond the 100 days or 10 matters involving 20 days in 12 months (whichever is applicable (see the following section on Providing Legal Services Without a Permit),
  - (b) opening an office from which legal services are offered or provided to the public;
  - (c) becoming resident (defined in rule 71);
  - (d) opening or operating a trust account, or accepting trust funds, except as permitted under the rules;
  - (e) holding oneself out or allowing oneself to be held out as willing or qualified to practise law in Alberta, except as a visiting lawyer.

Reference: Rule 72.3(2).

## **8. Can I open an office in Alberta?**

In general, opening an office in Alberta from which legal services are offered or provided to the public is an indicator of economic nexus (thereby necessitating a permit or transfer application, Rule 72.3(3)). However, a visiting lawyer who provides legal services in or from an office that

- (a) is the office of one or more resident members of the Law Society of Alberta, and
- (b) is affiliated with the lawyer's law firm in his or her home jurisdiction

does not, for that reason alone, establish an economic nexus in Alberta.

## **9. I am a partner (employee, associate) in a law firm with offices throughout the country. Do I establish an economic nexus with Alberta simply by practising law from our Alberta office?**

If one or more resident members of the Law Society of Alberta work from that office, and the office is affiliated with your firm in your home jurisdiction, providing legal services in or from that office does not, on its own, establish an economic nexus within Alberta (Rule 72.3(3)).

## **10. What happens if I establish an economic nexus in Alberta?**

You must not provide legal services without a permit (Rule 72.3(1)).

A visiting lawyer who establishes an economic nexus in Alberta must cease providing legal services forthwith, but may apply for call and admission or for a permit (Rule 72.3(4)). If you make one of these applications, you may ask the Executive

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Director to allow you to continue to provide legal services pending consideration of your application (Rule 72.3(5)).

## Providing Legal Services Without a Permit

### 1. In what circumstances can I provide legal services in relation to Alberta without a permit?

You must, at all times when you are providing legal services in relation to Alberta:

- be a member of an NMA or IJP governing body
- be entitled to practise law in the jurisdiction of that governing body
- meet the liability insurance requirements set out in the rules (which are generally met if you are insured as required by an NMA or IJP governing body)
- meet the defalcation compensation coverage requirements set out in the rules (which are generally met if you have the defalcation coverage required by an NMA or IJP governing body)
- have no disciplinary record *in any jurisdiction*
- not be subject to conditions or restrictions on your practice or membership in the governing body *in any jurisdiction* imposed as a result of or in connection with proceedings related to discipline, competency, capacity, admission or reinstatement
- not be the subject of criminal or disciplinary proceedings in which a matter has been directed to a hearing *in any jurisdiction*
- not establish an economic nexus within Alberta
- handle trust funds in accordance with the requirements set out in the rules
- provide legal services for no more than 10 legal matters and not more than 20 days in total during any 12-month period if you are entitled to practise law in the jurisdiction of an IJP governing body of which you are a member
- provide legal services for a maximum of 100 days in any calendar year if you are entitled to practise law in the jurisdiction of an NMA governing body of which you are a member

If you do not meet all of these requirements, you may only provide legal services in relation to Alberta if you first obtain a permit.

Reference: Rules 71, 72, 72.1, 72.2

### 2. What amount of work counts as a "day?"

"Day" means any calendar day or part of a calendar day in which a lawyer provides legal services, unless indicated otherwise by the context (Rule 71).

### 3. When do I begin counting the 100 days?

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You begin counting on the first day you begin practising law on an occasional basis in Alberta under these rules. If your home jurisdiction is an NMA jurisdiction, you can begin counting as of January 1 in subsequent years. If your home jurisdiction is an IJP jurisdiction, you start counting your 10 and 20 limitations as of January 1 each subsequent year.

#### **4. Is it possible to extend the 100 days?**

Yes, with the permission of the Law Society. You must obtain such an extension before working more than 100 days.

#### **5. How are the number of days recorded?**

Subject to exceptions for federal court or tribunal proceedings (Rule 72.2(6) and employees of the Judge Advocate General (Rule 72.2(5)), it is the responsibility of a visiting lawyer providing legal services to

(a) record and verify the number of days in which he or she provides legal services, and

(b) prove that he or she has complied with the Rules.

Reference: Rule 72.1(3) (You may have to adjust your time-keeping system to generate the reports you need to track this information.)

#### **6. What qualifies as a "disciplinary record?"**

"Disciplinary record" includes any of the following, unless reversed on appeal or review:

- any action taken by a governing body as a result of discipline
- disbarment
- a lawyer's resignation or otherwise ceasing to be a member of a governing body as a result of disciplinary proceedings
- restrictions or limits on a lawyer's entitlement to practise, other than those imposed as a result of failure to pay fees to a governing body, insolvency or bankruptcy or other administrative matter
- any interim suspension or restriction or limits on a lawyer's entitlement to practise imposed pending the outcome of a disciplinary hearing (Rule 71(1))

"Discipline" includes a finding by a governing body of any of the following:

- professional misconduct
- incompetence
- conduct unbecoming a lawyer
- lack of physical or mental capacity to engage in the practise of law
- conduct deserving of sanction

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- any other breach of a lawyer's professional responsibilities

Reference: Rule 71

## 7. What qualifies as a "legal matter?"

"Legal matter" includes any activity or transaction that constitutes the practice of law, and any other activity or transaction ordinarily conducted by members in Alberta in the course of practising law, whether or not persons other than lawyers are legally capable of conducting it (Rule 71).

## Applying for a Permit

### 1. How do I apply for a permit?

Review rule 72.5 and complete and return the application form by fax, mail or email to Membership Services.

## Becoming a Member in Alberta

### 1. What are the requirements for becoming a member of the Law Society of Alberta?

The basic requirements for a member of a Canadian law society to become a member of the Law Society of Alberta are:

- A bachelor of law degree or a *juris doctor* degree from a faculty of common law at a Canadian university or an equivalent qualification
- Good character and reputation
- Having passed a bar admission course
- Successful completion of the transfer examinations
- Submission of Application for Enrolment as a Member with the required documents and information

Reference: Sections 41 and 42 of the *Legal Profession Act*, Rules 46.3 and 61

### 2. Do I have to write transfer examinations?

You must write transfer examinations unless:

1) you will be employed in Alberta by government or a corporation and will be providing legal services only in the scope of that employment, or

2) you

(a) are a member of an NMA governing body;



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(b) are currently entitled to practise law in that jurisdiction;

(c) certify that you have familiarized yourself with Alberta law to the extent required to be able to practise competently in the areas in which you intend to practise, including the materials in the reading list required by the Executive Director;

(d) agree that any restrictions on your ability to practise in another jurisdiction will apply to your membership in Alberta; and,

(e) have not already written the transfer examinations in Alberta unsuccessfully.

Reference: Section 42 of the *Act* and Rules 61(3), (4) and (5)

### **3. What are the materials in the reading list set by the Executive Director?**

The materials currently consist of the following (which may be changed from time to time):

1. The Bar Admission Course resource materials
2. The Law Society of Alberta's *Code of Conduct*
3. The trust accounting rules (being Part 5 of the Rules of the Law Society of Alberta)

### **4. Some of the material included in the reading list set by the Executive Director is completely irrelevant to the areas that I intend to work in. Do I need to read them anyway?**

No. All lawyers have an ethical obligation to take on and perform only work which they are competent to do. This includes an obligation to know what you are competent to do, and to act accordingly. It is up to you to determine the nature of the work you will perform in Alberta, and to ensure that you have sufficiently familiarized yourself with the law in that area to be competent. Where material identified in the reading list is relevant to the work that you will perform, you must review and understand that material. Where material is not relevant to the work that you will perform you need not review that material.

Reference: Rule 61(3)(b)

### **5. Do I need to review any material in addition to what is included in the reading list set by the Executive Director?**

The basic requirement is that you must familiarize yourself with Alberta law to the extent required to be able to practise competently in the areas in which you intend to practise. If that requires the review of material not included in the reading list, then you must accomplish that. Some areas of law are sufficiently specialized or advanced that this will be required.

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Reference: Rule 61(3)(b)

**6. I want to provide legal services in Alberta while waiting for my transfer application is pending. Are there any conditions that I must meet?**

Yes. In all cases you must obtain the permission of the Law Society of Alberta.

1. If you are currently a member of an NMA governing body and are entitled to practise law in that jurisdiction, you must obtain the permission of the Executive Director, obtain a permit or become an articling student in Alberta before providing legal services. In other words, you cannot use the temporary mobility rules to practise in Alberta while your application for permanent mobility (i.e. transfer) is pending.
2. If you are not a member of an NMA governing body or are not entitled to practise in such a jurisdiction, you must become an articling student in Alberta before providing legal services.

Reference: Rule 61.1

**7. I have previously written the Alberta transfer examinations with unsuccessful results. What does this mean for me?**

If you are a member of an NMA governing body, and are currently entitled to practise there, you may deal with your unsuccessful transfer examination standing by satisfying the Executive Director that you will only practise law in areas in which you are competent to do so.

Reference: Rule 61(3) and (4)