

NAFTA — Foreign Legal Consultants

BACKGROUND

- The CBA is a member of the Canadian delegation, chaired by the Federation of Law Societies, to the Tripartite Working Group on Transnational Legal Services under NAFTA (CBA/ABA/Barras Mexicana). The group is mandated under NAFTA to negotiate the terms of the transnational provision of legal services among the three partners.
- In June 1998, the Tripartite Working Group signed a Joint Recommendation on “Foreign Legal Consultants and Related Aspects of the Cross-Border Delivery of Legal Services”.
- The Joint Recommendation provides, among other things, that:
 - *Scope of Practice*: Foreign legal consultants may practise and advise in the law of any country in which they are admitted to practise as a lawyer, and in the host party, when and to the extent they are permitted to do so by the host party. Foreign legal consultants may not represent clients in court unless permitted under the laws of the host party.
 - *Forms of Association*: U.S. and Canadian firms are permitted to practise in each other’s jurisdictions if at least one partner of the firm is a member of the Bar of the host party. Mexico will allow foreign firms to practise in Mexico only if all the partners or indirect owners of the firm are members of the Mexican Bar or hold foreign legal consultant permits issued by Mexico, and if the firm is controlled and managed by lawyers permitted to practise law in Mexico.
- In June 1998, the Council of the International Bar Association adopted a resolution on “General Principles for the Establishment and Regulation of Foreign Lawyers” which proposes approaches to regulation. The first would permit full scope of practice if the foreign legal consultant satisfies reasonable qualification requirements in the host jurisdiction. The second approach would not require qualification, but would limit scope of practice to those jurisdictions in which the foreign legal consultant is qualified and licensed, and would require disclosure to distinguish the consultant from licensed lawyers.

CURRENT STATUS

- The Joint Recommendation was delivered to the three governments and to the competent authorities for implementation. In Canada, each law society was asked to consider making the agreed upon changes to their regulatory regimes. Law societies in each province but Quebec have rules to recognize foreign legal consultants.

NEXT STEPS

- CBA will monitor developments and implementation.