National Mobility

Progressive *Pro Hac Vice*: The Canadian Approach

By David L. Campbell

Imagine seamlessly switching between hearings and depositions in Denver, Seattle, and Miami with no paperwork and no local counsel. Regretfully, affidavits, certificates of good standing, attorney admission caps, and various other procedural hurdles stand between you and your national practice. Things have gotten so bad that some senior practitioners, out of pure frustration, have simply taken the bar exam in states with particularly challenging *pro hac vice* rules. While corporate clients can find quality lawyers across the country, they frequently face high-stakes pattern litigation, and employing highly specialized national counsel to coordinate and try these cases makes both strategic and financial sense. Standing in the way is a jumble of inconsistent court rules and judicial edicts, some of which appear designed solely to protect the interests of in-state lawyers.

If you have ever thought that there has to be a better way to handle out-of-state attorney admission, the answer lies just across our northern border. With the exception of Quebec, which incorporates civil law into its legal system, every Canadian province has now fully implemented the National Mobility Agreement (NMA), a voluntary, reciprocal agreement establishing principles governing temporary lawyer mobility among signatory provinces. While the NMA establishes only a framework for provincial law societies, most if not all provinces apply a uniform set of rules. To prevent lawyers from abusing the temporary nature of this mobility, the NMA limits a lawyer's annual *pro hac vice* practice to 100 days per year, per province, although it is possible to extend this period upon request.

To qualify for *pro hac vice* admission under the NMA, lawyers must show that they: (1) are entitled to practice law in their home jurisdiction; (2) carry liability and other related insurance; (3) are not subject to criminal or disciplinary proceedings; and (4) have no disciplinary record in any jurisdiction. Unlike most American *pro hac vice* requirements, lawyers are not required to retain local counsel under the NMA and are not required to obtain permission from the provincial law society for their occasional practice—assuming that they do not exceed the 100 days per year. To safeguard against abuse, the provinces maintain a national registry containing the names of those lawyers eligible for interjurisdictional practice. With an international cross-border practice, but licenses only in Michigan and Ontario, I have experienced *pro hac vice* temporary admission procedures both in Canada and the United States. Without question, Canada's system has some advantages over the United States' patchwork. Here are a few key questions about adopting Canada's progressive *pro hac vice* south of its border.

Q: Doesn't Canada's federal system make a unified *pro hac vice* system easier there than here, given the various eccentricities of state law that have developed in the United States?

A: While Canada's federal system is somewhat more streamlined than the U.S. system, each province has its own distinct case law and procedure, with different summary judgment standards and even different names for court clerks. Nova Scotia uses the title prothonotary, for example. With electronic research now a cornerstone of law school education, getting up to speed on the specific procedural requirements and legal distinctions in other jurisdictions requires nothing more than a few hours on the computer. Given the specialized nature of most national practices, a good 50-state compendium can often provide a basic overview of state law in minutes. DRI has several great publications available.

Q: What about local counsel?

A: While local counsel can play an integral role at trial or during substantive hearings, fewer cases are tried every year. In many situations, the inherent duplication of effort is neither beneficial nor cost effective for our clients. While the NMA by no means prohibits local counsel, I have had considerable litigation success in recent years under the NMA without having a local lawyer sign-off on every pleading or sit next to me during hearings.

Q: Wouldn't establishing a nationwide system take a long time? Who would organize the effort?

A: Canada's network of national and regional firms led the charge to adopt the transparent mobility now

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available through the NMA. Corporations needed lawyers who could operate nationally, and the Federation of Law Societies of Canada created a task force in 2001 to satisfy this need while still fulfilling the profession's mandate to protect the public interest. The NMA became a truly national agreement in 2006.

Unlike the current heath care debate, adopting Canada's progressive NMA system for temporary attorney admission involves few controversies, and there is no reason why the United States could not pursue something similar. The United States Federal Judiciary has already begun efforts to unify its *pro hac vice* procedure, with many circuits already employing a simplified admission process for those admitted to other federal courts. Using the NMA as a framework, national bar organizations could take the lead in creating a voluntary agreement to circulate to state and federal courts for approval.

As in Canada, we would not build this system overnight, but Rome was not built in a day. (A complete copy of the NMA can be downloaded at http://www.flsc.ca/.) FD