



Ministry of Attorney General
Strategic Planning and Legislation Office

Consultation Paper:
Proposal to Amend the *Notaries Act*

November 2007

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Ministry of Attorney General

CONSULTATION PAPER: PROPOSAL TO AMEND THE *NOTARIES ACT*

PROPOSED AMENDMENTS:

1. REMOVE THE LIMITATION ON THE NUMBER OF NOTARIES PUBLIC THAT MAY PRACTICE IN BRITISH COLUMBIA; AND
2. REMOVE THE GEOGRAPHICAL RESTRICTION ON THE PROVISION OF SERVICES BY NOTARIES.

The *Notaries Act* and Notaries Public in British Columbia

Notaries public in British Columbia provide a variety of services, such as administering oaths, drawing affidavits, and attesting commercial instruments. Examples of other services provided include drawing and supervising the execution of some wills, and drawing instruments relating to property which are intended, permitted or required to be registered, recorded or filed in a registry or other public office, such as land title documents.

The *Notaries Act* provides the statutory framework for the regulation of notaries public in British Columbia. This includes:

- establishing the Society of Notaries Public of British Columbia;
- setting the scope of practice authority for notaries public;
- providing for the operation of a special fund for compensation for theft by a member of the Society;
- regulating the standard and conduct of members of the Society, for example, by providing for eligibility requirements and discipline procedures.

Notaries in British Columbia are a self-regulating profession, regulated by the Society of Notaries Public of British Columbia. They are enrolled as members by the Supreme Court of British Columbia, upon satisfying the court that they are a fit person for enrolment as a member. The court will take into consideration an applicant's good character, reputation and integrity, and the applicant must meet certain education requirements for becoming a notary public.

All practising lawyers in British Columbia are, by virtue of their profession, also notaries public. In addition, certain persons may be appointed as a notary public by the Lieutenant Governor in Council. These may include persons who live in an area not within a notarial district, a permanent employee of the government of British Columbia or of the government of Canada¹, or a registrar (or person performing the functions of registrar) of a university.

¹ These appointments are few in number and will typically be given in rural communities where there is limited access to the services of a notary public.

Lawyers and persons appointed by the Lieutenant Governor in Council are not members of, and are not regulated by, the Society of Notaries Public of British Columbia.

Quantitative and Geographical Restrictions

The Schedule to the *Notaries Act* restricts the number of notaries public to 323 and allocates the number of notaries that may practise within each of 81 notarial districts. For example, the notarial district of Dawson Creek has 2 notaries allocated to it, while the district of Vancouver has 107.

The *Notaries Act* also limits notaries public to practising only within the specific notarial district to which they are appointed (section 6) or to the area for which they are enrolled if outside a notarial district (section 7).

Additionally, the Act authorizes the Supreme Court of British Columbia to enrol a notary public in an area outside of a notarial district based on the need for a notary public in that area. The restrictions on the number of notaries do not include these appointments, lawyers or the other persons who may be appointed by the Lieutenant Governor in Council.

Proposed Amendments:

The proposed amendments to remove the quantitative and geographical restrictions on the practise of notaries public are necessary to comply with British Columbia's obligations under the Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta.²

It is highly unusual in today's society to limit the number of persons that may practise in a particular field, and to limit the provision of services geographically. The restrictions could be seen as creating an unfair monopoly for notaries public and contrary to market demand principles. Removing the restrictions would also address some practical difficulties and inconsistencies. For example, the number of notaries public permitted to practise in a particular district may not reflect or support the need for services in the community. Notarial districts create artificial borders that unnecessarily limit the provision of services.

Additionally, a qualified applicant cannot be enrolled or practise until there is a vacancy, unless the applicant can demonstrate there is "need for a notary public" in an area outside of a notarial district. Even if a vacancy arises, the applicant may be competing with other applicants for the desired district.

The proposed changes would enable any person who chooses to become a notary public, and who meets all the necessary qualifying criteria, to practise in their chosen profession. (Although it is anticipated that any increase in practising notaries public would likely be gradual and will be limited, in the short term, by the capacity of the education program.)

² A copy of the Trade, Investment and Labour Mobility Agreement between British Columbia and Alberta, as well as additional information about the agreement, may be viewed at http://www.gov.bc.ca/ecdev/popt/media_room/bc_ab_trade_investment_mobility_agreement.htm .

Other amendments consequential to these changes will also likely be required. For example, to provide for the possibility of an increase in the number of notaries, it will likely be necessary to enable increases in the minimum levels of the special fund that exists for compensating victims for pecuniary losses resulting from the misappropriation or wrongful conversion by a notary public.

Submitting Comments:

The Ministry of Attorney General is seeking input on the proposed changes to the *Notaries Act* outlined above. Please send comments by **December 14, 2007** to the Strategic Planning and Legislation Office:

By email: AGWEBFEEDBACK@gov.bc.ca
(Please include "Notaries Act Proposal" in the subject line.)

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