



RISK NOTE

SUBJECT: Non-Residents of Canada and Jurisdictional Issues

From time to time, women who are not residents of Canada may wish to travel to BC in order to give birth in Canada and seek the services of a registered midwife to provide care. Some registered midwives may choose to provide midwifery services to clients who are not permanent residents of Canada. When assessing whether to provide care in these instances, registered midwives should consider that the coverage provided to them under the Midwives Protection Program (MPP) contains a territorial limitation. MPP coverage applies only to claims which give rise to suits or judicial proceedings brought against the registered midwife in Canada. MPP will not respond to legal proceedings which are brought in any jurisdiction outside of Canada. When midwifery services are provided to a non-resident of Canada, the chance of legal action being brought outside of Canada increases.

Risk Management

- 1) In order to assist in establishing Canadian jurisdiction for any potential legal actions resulting from midwifery services provided by a midwife in BC, it is recommended that potential clients who are not Canadian residents be required to sign a Governing Law and Jurisdictional Agreement prior to the midwife accepting the client into her care. A sample agreement is attached. It is important to also discuss the purpose of the agreement with the potential client, which is to establish BC as the jurisdiction for legal matters. While signing such an agreement does not guarantee that a client will only launch legal action in BC, it does strengthen the ability to argue for BC jurisdiction if legal action is taken outside of Canada. Registered midwives should also be aware that signing such an agreement does not prevent a non-resident of BC from making a complaint to the BC College of Nurses and Midwives (BCCNM). There are no restrictions in BC respecting individuals who wish to complain to a BC health care regulatory body based on their status in Canada.
- 2) Registered midwives should be familiar with Midwives Association of BC, BCCNM and hospital policies, protocols or guidelines with respect to non-residents of Canada. Caring for a non-resident of Canada can complicate compliance with standards, policies and protocols simply because of distance between and time available to spend with a non-resident client before and after the birth – additional planning to ensure this may be needed.
- 3) The registered midwife should document discussions with non-residents of Canada.

IN NO CIRCUMSTANCES SHOULD THE PROVISION OF URGENT / EMERGENCY CARE BE DELAYED BY THE FAILURE TO HAVE A GOVERNING LAW AND JURISDICTIONAL AGREEMENT SIGNED.

March 8, 2017

January 2021: CMBC to BCCNM update (name change occurred September 1, 2020)

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It should be clearly understood that this document and the information contained within is not legal advice and is provided for guidance from a risk management perspective only. It is not intended as a comprehensive or exhaustive review of the law and readers are advised to seek independent legal advice where appropriate. If you have any questions about the content of this Risk Note, please contact the Midwives Protection Program at mpp@gov.bc.ca.

Governing Law and Jurisdiction Agreement for midwives in private practice

This agreement ("Agreement") is entered into by and between _____ and _____
[Name of client]
_____ (collectively, the "Parties").
[midwife in private practice]

Governing Law

The Parties hereby agree that:

- a) all aspects of the relationship between _____ and _____
[Name of client]
_____ as well as her agents, delegates, employees, and any
[midwife in private practice]
physicians and other independent healthcare practitioners providing medical or other healthcare and treatment to _____, or in association with _____,
[Name of client] [midwife in private practice]
including without limitation any medical or other healthcare and treatment provided to _____, and
[Name of client]
- b) the resolution of any and all disputes arising from or in connection with that relationship, including any disputes arising under or in connection with this Agreement,

shall be governed by and construed in accordance with the laws of the province of British Columbia (other than conflict of laws rules) and the laws of Canada applicable therein.

Exclusive Jurisdiction

The Parties hereby acknowledge that the medical or other healthcare and treatment received by _____ from _____ will be
[Name of client] [midwife in private practice]

provided in the province or territory of British Columbia, and that the Courts of British Columbia shall have exclusive jurisdiction to hear any complaint, demand, claim, proceeding or cause of action, whatsoever arising from or in connection with that medical or other healthcare and treatment, or from any other aspect of the relationship between _____ and _____
[Name of client] [midwife in private practice]

Date: _____

Name of client [Please print]

Signature of client / substitute
decision-maker on behalf of client

Date: _____

Per: _____
[midwife in private practice]

Name [Please print]