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CLLAS has provided its members and its reinsurers with the following examples of what CLLAS would consider as included in the practice of Canadian law or as “incidental” to the practice of Canadian law. These are only examples and should not be considered definitive or exclusive.

1. Advice relating to a matter generally governed by Canadian law whether given in Canada or from a foreign location, construed as having a foreign law element.
2. Advice regarding international law construed as having a foreign law component.
3. A member of a firm expressing an informal or hypothetical opinion or advice on foreign law or procedure.
4. Persons who are registered intellectual property agents in a Canadian office, who are entitled to prosecute applications before the U.S. Patent and Trademark Office or an equivalent agency in another foreign jurisdiction without the intervention of a lawyer or agent qualified under the laws of the foreign jurisdiction either because of reciprocal arrangements between Canada and the foreign jurisdiction or because the persons are qualified under the laws of the foreign jurisdiction.
5. Lawyers involved as arbitrators in international arbitrations or domestic arbitrations which are applying to non-Canadian law. One does not have to be a lawyer to be an arbitrator (international or otherwise) so arbitration work is considered as “ancillary to the practice of law” and not the actual practice of law.
6. Other situations similar to the above where reciprocal recognition is provided for Canadian lawyers.
7. In the course of a transaction that has a Canadian element (e.g. a cross-border transaction or a transaction involving Canadian entities or assets), there may be one or more agreements that are governed by the laws of a foreign jurisdiction which a Canadian lawyer may be called upon to draft or comment on. If formal opinions are required, foreign counsel will opine on the matters governed by foreign law.
8. A Canadian lawyer¹ drafts an agreement for a client in Canada or in a foreign jurisdiction in respect of a transaction in a foreign jurisdiction which agreement is expressed to be governed by the laws of that foreign jurisdiction. The Canadian lawyer is retained to do this because the client likes the way he or she drafts contracts. Any necessary formal opinions regarding foreign law are obtained from counsel from that foreign jurisdiction.

¹ The term “Canadian lawyer” as used in this memo means a person qualified to practise law under the laws of one or more of the provinces or territories of Canada.



9. A Canadian firm is hired to work on a set of agreements between two non-Canadian entities relating to a transaction in a foreign country. The agreements will be governed by the laws of that country. The Canadian firm has been chosen because the Canadian lawyer working on the agreements either has expertise in the area or in a previous transaction has impressed the client with his/her drafting or negotiating skills. There is, however, no Canadian party to the transaction and no Canadian law is involved. Counsel duly qualified to practise the laws of the foreign country would be retained by the client to advise on the specific legal requirements of the foreign jurisdiction and to give all necessary formal opinions.
10. A Canadian client has a transaction in a foreign jurisdiction. Canadian lawyers, either from their firm's Canadian office or one of their firm's foreign offices, advise the client generally with respect to the transaction and supporting agreements but a qualified lawyer in the foreign jurisdiction is also retained to advise on the specific legal requirements of the foreign jurisdiction and to give all formal necessary opinions.
11. Canadian law firms participating in transactions involving agreements governed by foreign law regularly issue formal opinions that the entering into of foreign law agreements will not contravene applicable Canadian law, that any security interest granted against Canadian assets under such agreements are valid under applicable Canadian security statutes and that Canadian courts will give recognition to the foreign law and to judgments rendered by foreign courts in any proceeding brought in a Canadian court to enforce such agreements or foreign judgments.
12. In transactions involving both Canadian and foreign law elements, the Canadian law firm "leads" the transaction. A law firm qualified in the applicable foreign jurisdiction issues formal opinions on matters relating to the laws of such jurisdiction, which opinions are addressed, inter alia, to the Canadian law firm. The Canadian law firm issues a formal opinion which addresses not only matters governed by Canadian law but also repeats the opinions included in the formal opinion from foreign law firm (i.e. a "wrap" opinion). Insofar as the "wrap opinion" opines on matters of foreign law, it is relying solely upon the opinion of the foreign law firm.