



TAB 8

**Report to Convocation
November 29, 2019**

Professional Regulation Committee

Committee Members

Jacqueline Horvat (Chair)
Etienne Esquega (Vice-Chair)
Jared Brown
Gerard Charette
Jean-Jacques Desgranges
Julian Falconer
Benson Lau
Michelle Lomazzo
Cecil Lyon
Scott Marshall
Clare Sellers
Megan Shortreed
Andrew Spurgeon

Purpose of Report: Decision

**Prepared by the Professional Regulation Division
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Law Society
of Ontario

Barreau
de l'Ontario

Tab 8.1

Professional Regulation Committee

Amendments to the Law Society's By-Laws – Anti-Money Laundering and Terrorist Financing

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Motion

That Convocation approve:

- (i) **amendments in principle to the Law Society's By-Laws 7.1 and 9 to adopt changes that have been made to the Model Rules to Fight Money Laundering and Terrorist Financing approved by the Federation of Law Societies of Canada, subject to ii below; and**
- (ii) **the establishment of a working group of interested benchers to work with the Professional Regulation Committee including its Chair and Vice-Chair on the proposed by-law amendments.**

Executive Summary

It has become increasingly apparent that money laundering is a significant problem in this country. With near daily press reports detailing the extent to which money is being laundered or “snow washed” in Canada¹, pressure is mounting on governments to effectively address this issue.

While law societies support the government's efforts to fight money laundering and terrorist financing, they have insisted that the tools used must recognize and comply with the fundamental principles of solicitor-client privilege and the independence of the bar.

When the federal government's proceeds of crime legislation was amended to apply to lawyers, the Federation of Law Societies of Canada (the “Federation”), on behalf of provincial and territorial law societies, responded with a two-pronged approach:

- i. It challenged the legislation as unconstitutional; and
- ii. It enacted rules to guard against lawyers becoming involved in money laundering or terrorist financing, which continue to protect solicitor-client privilege and the independence of the bar.

In many respects, this approach has been successful. In 2015, the Federation's challenge to the federal legislative regime was upheld and lawyers are excluded from its application. This has

¹ For instance, in the last year the US State Department labelled Canada “a major money laundering jurisdiction” (See United States Department of State. Bureau of International Narcotics and Law Enforcement Affairs. *International Narcotics Control Strategy Report Volume II*. March, 2019. Available at <https://www.state.gov/wp-content/uploads/2019/03/INCSR-Vol-INCSR-Vol.-2-pdf.pdf>). Also see, Transparency International Canada study, which has estimated that \$20 billion in anonymous funds have entered the GTA real estate market since 2008 (see *Dirty Money is Driving Up Toronto Real Estate Prices*, report says. Toronto Star, March 21, 2019, available at <https://www.thestar.com/news/canada/2019/03/21/dirty-money-is-driving-up-toronto-real-estate-prices-report-says.html>).



ensured that privileged information continues to be protected from state seizure and that licensees have not become agents of the state engaged in the secret provision of client information to government agencies.

The exclusion of legal service providers from the government's anti-money laundering regime is, however, viewed by some as problematic.² Legal professionals, and solicitor-client privilege in particular, have been identified as blocks to effective enforcement.³ If law societies are to maintain their own regulation in this area and continue protecting solicitor-client privilege and the independence of the bar, they must ensure that their rules are effective and responsive to the ever-changing methods used by those who perpetrate this type of criminal activity. In addition, law societies must continue to provide direction and guidance to licensees to ensure that they do not unwittingly find themselves engaged in criminal acts.

In late 2016, the Federation established an Anti-Money Laundering and Terrorist Financing Working Group, which then engaged in a review of the Federation's Model Rules and the regime that law societies have enacted to combat money laundering and terrorist financing. In 2018, the Working Group proposed a number of amendments to the Model Rules to ensure that they remain effective tools in this fight. To accompany the amendments, the Working Group drafted extensive guidance materials to assist legal professionals with compliance and law societies with enforcement.

The proposed amendments built on the existing anti-money laundering and terrorist financing ("AML") regime, and proposed targeted amendments including clarification with respect to the amount of cash that a legal professional can receive in respect of any one client matter, and the introduction of a new Trust Accounting Model Rule to explicitly prohibit the use of a trust account for a purpose unrelated to the practice of law.

The proposed amendments were incorporated into the Model Rules by the Federation Council in October 2018. Law Societies across the country have now begun to adopt the Model Rule amendments into their own codes of conduct.⁴ In Ontario, the amendments would be incorporated into the Law Society's By-Laws 7.1, *Operational Obligations and Responsibilities*, and 9, *Financial Transactions and Records*.

² See for instance, *OPACITY, Why Criminals Love Canadian Real Estate (And How to Fix it)*, Transparency International Canada, "the Lawyer Challenge" at page 35, available at <http://www.transparencycanada.ca/wp-content/uploads/2019/03/BOT-GTA-Report-WEB-copy.pdf>

³ The Financial Action Task Force, for instance, considers the exclusion of lawyers from the federal government's scheme to be a "serious impediment" to Canada's efforts to fight money laundering. Financial Action Task Force, *Anti-money laundering and counter-terrorist financing measures: Canada mutual evaluation report*. September 2016, (pg. 7). Available at <http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Canada-2016.pdf>.

⁴ To date, the law societies in British Columbia, Alberta, Manitoba, Newfoundland and Labrador, and the North West Territories have adopted the amendments. In addition, the amendments will be before bench meetings in the fall in Saskatchewan, Nova Scotia, and Prince Edward Island.



The most extensive of the amendments are to the Model Rule on Client Identification and Verification. At **Tab 8.1.1** there is a high level summary of the current requirements for client identification and verification applicable to licensees under By-Law 7.1, and the new requirements and amendments to the Model Rule.

Implementation of these changes will ensure that our rules aimed at fighting money laundering and terrorist financing are robust, effective, and up-to-date, and will:

- preserve solicitor-client privilege and the independence of the bar by maintaining our own AML rules separate from the federal government's AML regime;
- ensure that the largest law society in the country is seen to be acting in concert with other provincial and territorial legal regulators to take concrete steps toward enhancing existing measures;
- provide necessary guidance and resource materials to licensees so that they have sufficient direction regarding this type of criminal activity and are not reckless; and
- enhance our existing provisions aimed at combatting money laundering and terrorist financing, which will strengthen our position as a competent and effective regulator as we continue to work in collaboration with the federal government.

Convocation is asked to approve amendments in principle to the Law Society's By-Laws 7.1 and 9. If approved, by-law amendments will be drafted for review by the Professional Regulation Committee and approval by Convocation.

Background

A. Context

In 2000, the federal government enacted the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("PCMLTFA")⁵. Under that Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions involving cash to the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC").

In November, 2001, the Federal government enacted regulations to the PCMLTFA that made that Act applicable to lawyers, and would have required lawyers to secretly report on certain of their clients' financial transactions. In response, the Federation and the Law Society of British Columbia,

⁵ S.C. 2000, c. 17, available at <https://laws-lois.justice.gc.ca/eng/acts/p-24.501/>



with support from the Canadian Bar Association, challenged the constitutionality of the legislation. Ultimately, the Supreme Court of Canada agreed with the Federation, holding that the provisions as applicable to lawyers unjustifiably violated sections 7 and 8 of the Charter by interfering with the lawyer's commitment to the client's cause.⁶ Although the Federation's challenge was successful, the Court did indicate that the government could craft a scheme under which it could obtain the information that it sought from lawyers in a constitutionally compliant manner.

While this litigation was ongoing, the Federation recognized the importance of this issue, and adopted the strategic priority of crafting effective AML rules that maintained solicitor-client privilege and an independent bar.⁷ As such, the Federation enacted two model rules aimed at limiting the handling of cash by licensees and requiring due diligence in identifying clients.

The Cash Transactions and Client Identification and Verification Model Rules were adopted by the Federation in 2004 and 2008 respectively. They were subsequently incorporated into professional conduct rules by all Canadian law societies.⁸ In Ontario, these rules have been incorporated into By-Laws 7.1 and 9.⁹

Since the initial introduction of these rules, the Federation and law societies have continued to adopt and enforce conduct rules that essentially mirror the Federal regime, while also educating licensees about the perils of becoming involved in this type of criminal activity.

In October 2016, the Federation Council established a working group to review the Model Rules and their enforcement in response to several developments in this area including:

- Amendments to the federal AML regulations under the PCMLFTA, which introduced new client identification and verification provisions;
- The evaluation report of the Financial Action Task Force ("FATF") on Canada's AML regime. The evaluation report was conducted as part of the mutual evaluation process under which FATF conducts peer reviews of each member country to assess levels of implementation of the FATF recommendations. FATF identified Canada's exclusion of

⁶ Canada (Attorney General) v. Federation of Law Societies of Canada [2015] 1 SCR 401, available at <https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/14639/index.do>

⁷ As noted by the former President of the Federation, Ronald J. MacDonald, Q.C., the introduction of the No Cash Model Rule in 2004 "demonstrated the Canadian legal community's support for the fight against money-laundering, but did so in the context of a self-regulating and independent bar". (MacDonald, Ronald J., "What Can be Learned from the Canadian Experience" 2010, *J. Prof. Law.* 143, 150).

⁸ *Background Information: Anti-money laundering and terrorist financing initiatives of the Federation of Law Societies of Canada and Canada's 14 law societies*, Federation of Law Societies of Canada, available at <https://flsc.ca/wp-content/uploads/2019/06/AMLBackgroundJune2019.pdf>

⁹ A requirement that licensees not use their trust accounts for purposes unrelated to the practice of law or the provision of legal services is incorporated into Rule 3.2-7.3 of the *Rules of Professional Conduct* and Rule 3.02(6) of the *Paralegal Rules of Conduct*.



lawyers from the legislative framework as a “significant loophole” in our AML regime;¹⁰ and

- The Department of Finance national risk assessment, conducted as part of the FATF evaluation process. This assessment assigned a “high vulnerability rating” to legal professionals who were found have a high or very high risk of exposure to scenarios with a risk of money laundering due to the nature of the services they provide.¹¹

In October 2017, the Working Group completed its review and released a consultation report, which proposed a number of amendments as well as the addition of a new trust accounting model rule.

In December 2017, the Professional Regulation Committee launched a call for comment about the proposed amendments.¹² At its meeting in March 2018, the Committee considered the submissions received, as well as additional comments and concerns from Committee members, and provided feedback to the Federation.

The Law Society’s submissions to the Federation recognized the importance of effective AML provisions. However, we identified certain issues with compliance that were ultimately addressed by the Working Group in its Final Report released in October 2018.¹³

At its meeting on October 11, 2018, the Professional Regulation Committee recommended that the Law Society of Ontario support the proposed amendments when they were considered by the Federation Council. The Committee also flagged the need for thorough and accessible guidance and direction for licensees and law societies to assist with implementation.

On October 19, 2018, the Federation adopted the amendments to the Cash Transactions and Client Identification and Verification Model Rules, and enacted a new Model Trust Accounting Rule.¹⁴

In February, 2019, the Federation provided law societies with two guidance documents to assist licensees with compliance and law societies with enforcement:

¹⁰ *Supra* note 3, at page 3.

¹¹ Finance Canada, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015*. Available at <https://www.fin.gc.ca/pub/mltf-rpcf/mtf-rpcf-eng.pdf> at pg. 52.

¹² See Professional Regulation Committee, Report to Convocation, December 1, 2017, at <https://lawsocietyontario.azureedge.net/media/lso/media/legacy/pdf/c/convocation-dec-2017-professional-regulation-committee-report.pdf>

¹³ The Final Report on the Model Rules by the Anti-Money Laundering and Terrorist Financing Working Group is available on the Federation’s website at <https://flsc.ca/wp-content/uploads/2018/10/Report-on-the-Model-Rules-1Oct2018.pdf>

¹⁴ The Model Rules, as amended, are available on the Federation’s website at <https://flsc.ca/national-initiatives/model-rules-to-fight-money-laundering-and-terrorist-financing/>.



- i. Guidance for the Legal Profession, aimed at providing information to legal professionals about compliance with the new Model Rules¹⁵; and
- ii. A Best Practices Guide for Law Societies in Canada, to assist law societies with enforcement of the new Model Rules.¹⁶

LSO Practice Resource materials will be reviewed and updated to supplement these resources.

Analysis

A. The Current Amendments

The amendments enacted by the Federation ensure that the Model Rules are robust and up-to-date by tracking the federal regulations to the *PCMLTFA*. A summary of the changes to the Model Rules is provided below.

I. Cash Transactions Model Rule

There are two main amendments to the Cash Transactions Model Rule:

- i. clarification about the amount of cash that may be received in respect of any one client matter; and
- ii. the removal of certain exemptions to the rule.

In its initial Consultation Report, the Working Group concluded that the quantum of the threshold (\$7,500) remained appropriate, but proposed an amendment to clarify that legal professionals may not accept cash “in an aggregate amount greater than \$7,500 in respect of any one client matter”. This clarification was adopted by the Federation Council¹⁷ and is consistent with the Law Society’s interpretation and application of the existing rule.¹⁸

The final amendments also removed the exception related to cash received pursuant to a court order. The Working Group concluded it was of limited value and posed a risk of money laundering.

II. Client Identification and Verification

¹⁵ A copy of the *Guidance for the Legal Profession* is available on the Federation’s website at <https://flsc.ca/wp-content/uploads/2019/05/LawyerGuidance2019.pdf>

¹⁶ *The Best Practices Guide for Law Societies in Canada* is not publicly available. A copy is available in the Professional Regulation Committee report of September 12, 2019.

¹⁷ See section 1 of the Model Rule on Cash Transactions, available on the Federation’s website at <https://flsc.ca/wp-content/uploads/2019/04/Cash-Transactions-Rule.pdf>.

¹⁸ Section 4(1) of By-Law 9 currently provides that “a licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of 7,500 or more Canadian dollars”.



The amendments to the Client Identification and Verification Model Rule are the most extensive of the changes that have been made.¹⁹

Under the current requirements in By-Law 7.1, licensees who are retained to provide professional services are required to identify their clients. When the retainer includes the receiving, paying or transferring of funds, the licensee must verify the identity of their clients.²⁰

The amendments to the Model Rules build on these existing rules. At **Tab 8.1.1** there is a summary of the of the current requirements for client identification and verification applicable under By-Law 7.1 and the new requirements and amendments to the Model Rule.

While a number of these amendments do impose new obligations and duties on licensees, the Guidance materials prepared by the Federation provide significant direction, including red flags that should be considered when contemplating the source of client funds and next steps where ongoing monitoring of the business relationship with clients requires additional measures.²¹ In addition, to coincide with implementation, the Law Society's organizational departments will review and update existing resource materials to ensure that there is additional information to assist licensees with understanding and complying with any new obligations.

III. Trust Accounting Model Rule

The new Trust Accounting Model Rule restricts the use of trust accounts to transactions or matters for which a licensee or the licensee's firm is providing legal services.²² In Ontario this restriction has been in place since 2011 in Rule 3.2-7.3 of the *Rules of Professional Conduct* and Rule 3.02(6) of the *Paralegal Rules of Conduct*.

Although the Model Rule is more specific than our current prohibition²³, our rules clearly and explicitly prohibit the use of a trust account for purposes not related to the provision of legal services.

The Model Rule does, however, provide an additional requirement that legal professionals "must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates".²⁴ This new provision is recommended as a means of discouraging the

¹⁹ The Model Rule on Client Identification and Verification, as amended, is available on the Federation's website at <https://flsc.ca/wp-content/uploads/2019/04/Client-ID.pdf>.

²⁰ See By-Law 7.1 (available at <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/b/by-law-7.1-operational-obligations-01-25-18.pdf>).

²¹ See for instance pages 18-20 of the Guidance for the Legal Profession.

²² The Trust Accounting Model Rule is available on the Federation's website at <https://flsc.ca/wp-content/uploads/2019/04/Trust-Fund-Final.pdf>.

²³ Section 1 of the Model Trust Accounting Rule provides that "a lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer's firm is providing".

²⁴ See section 2 of the Model Trust Accounting Rule.



holding of funds in trust for long periods of time, which may appeal to certain clients as a means to shelter money from authorities or from oversight.²⁵

B. Recent Developments

There have been two recent developments that Convocation should be aware of as it considers the implementation of the Model Rule amendments into our by-law:

I. Relationship with the Federal Government

Although a change in the Federal Government may result in a change in approach, the Federation's AML strategy appears to have resulted in a shift in the government's focus, from a desire to bring lawyers into the federal regime toward a more collaborative relationship with law societies.

On June 13, 2019, the Federal Government announced a new working group with the Federation "to address the inherent risks of money laundering and other illicit activity that may arise in the practice of law".²⁶ The Working Group, which had its first meeting in June 2019, includes representatives from the Department of Finance and other federal government agencies, as well as from the Federation and the law societies of British Columbia, Newfoundland and Labrador, Ontario and Quebec.²⁷ This Working Group will explore issues related to money laundering and terrorist financing that may arise in the practice of law and will also serve to strengthen information sharing between law societies and the federal government. A uniform money laundering and terrorist financing strategy among law societies, in particular those who are represented on the Working Group, will show the government and other monitoring agencies that we understand the seriousness of this problem and are working to ensure that lawyers are not a weak link in the enforcement chain.

II. *Criminal Code* amendment

Recent changes to the *Criminal Code* have introduced an alternative element of recklessness to the offence of laundering proceeds of crime. According to the Federal Government, this change will "criminalize the activity of moving money on behalf of another person or organization while

²⁵ Section 7(4) of the Law Society's By-Law 9 does direct that a licensee "shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her", however, client funds in excess of licensee fees are not specifically addressed

²⁶ See *Government of Canada Leads National Response to Money Laundering and Terrorist Financing* Department of Finance Canada. Available at <https://www.fin.gc.ca/n19/19-063-eng.asp>.

²⁷ See *Federation welcomes opportunity to work with federal government to address issues related to money laundering and terrorist financing*, Federation of Law Societies of Canada. Available at <https://flsc.ca/federation-welcomes-opportunity-to-work-with-federal-government-to-address-issues-related-to-money-laundering-and-terrorist-financing/>.



being aware that there is a risk that this activity could be money laundering and continuing with that activity in spite of the risk.”²⁸

Under this expanded definition of laundering proceeds of crime, licensees who are not alert to, or who ignore known warning signs and red flags could face criminal prosecution for money-laundering.²⁹ Therefore, ensuring that our rules impose sufficient obligations on licensees and that licensees have appropriate resource materials to avoid recklessness with respect to client funds is imperative. In addition, robust rules and guidance materials will provide an opportunity to inform judicial decision-making as the courts begin to grapple with this new aspect of the offence of laundering proceeds of crime.

C. Recommendations and Rationale

The Federation has adopted the amendments to the Model Rules with the unanimous support of the Federation Council. The Federation is now looking to each provincial law society to adopt these rules into their own codes of conduct. For the following reasons it is recommended that Convocation approve amendments in principle to the Law Society’s By-Laws 7.1 and 9 in order to adopt the changes that have been made to the Federation’s Model Rules:

I. Implementation in this province will:

- preserve solicitor client privilege and the independence of the bar by maintaining our own AML rules separate from the federal AML regime;
- ensure that our rules aimed at fighting money laundering and terrorist financing are robust, effective, and up-to-date;
- ensure that the largest law society in the country is seen to be acting in concert with other provincial and territorial legal regulators to take concrete steps toward enhancing existing measures; and
- enhance our existing provisions aimed at combatting money laundering and terrorist financing, which will strengthen our position as a competent and effective regulator as we continue to work in collaboration with the federal government.

²⁸ See Budget 2019, Budget Plan, Chapter 4: Delivering Real Change. Available at <https://www.budget.gc.ca/2019/docs/plan/chap-04-en.html>

²⁹ Note as well that the Globe and Mail has reported that the Ontario government has established a Serious Fraud Office, which includes investigators and prosecutors detailed to financial crimes, including money laundering. (See, “New Ontario initiative targets complex, white-collar crimes”, *the Globe and Mail*, August 20, 2019,



- II. The strengthening of our rules, along with the provision of guidance and resource materials, will ensure that licensees have sufficient direction regarding this type of criminal activity to be appropriately vigilant and not reckless.
- III. The amendments to the Client Identification and Verification Rules will strengthen our AML regime with modest impacts on licensees' practices. In addition, guidance materials prepared by both the Federation and the Law Society will provide licensees with the guidance and direction necessary to ensure compliance;
- IV. The new Trust Accounting Rule and the amendments to the Cash Transactions Rule do not significantly alter current existing obligations:
 - The new Trust Accounting Rule is essentially in force in Ontario and should not create any new obligations for licensees beyond a requirement to pay out money held in trust as soon as practicable upon the completion of the retainer; and
 - The changes to the Cash Transactions Rule for the most part align with our current interpretation of the requirement;

Next Steps

If Convocation approves amendments in principle to By-laws 7.1 and 9, they will be drafted for review by the Professional Regulation Committee before being brought back to Convocation for final approval.

Client Identification and Verification – Current LSO and Model Rule Requirements

The client identification and verification requirements are aligned with the licensee’s obligation to know their client, understand the client’s financial dealings in relation to the retainer, and manage any risks arising from the professional relationship with the client.

The rules are meant to cause the licensee to consider the nature of the retainer and the information provided by the client, including with respect to the source of funds for a transaction, in order to reduce the risk that the licensee may unwittingly become engaged in criminal activities or become a tool or a dupe for persons who seek to use the licensee to legitimize otherwise suspicious activities or use the licensee’s trust account to hide or obscure criminal financial activity.

The following sets out the current requirements for client identification and verification in black and the proposed new requirements in blue. If approved in principle, the new requirements would be specified in greater detail in the by-laws and supported by resources such as checklists and practice guides.

1. Do these requirements apply?

- **Identification And Verification Requirements Apply To Licensees Other Than Those**
 - acting on behalf of their employer
 - acting as an agent for another licensee who has already complied
 - acting for a client referred by another licensee who has already complied
 - LAO duty counsel (unless retainer involves the receipt, payment, or transfer of funds)

2. Identification Requirement

- **You Have Been Retained by a Client for Any Matter**
 - A. If the client is an individual
 - **You must identify the individual. Obtain and Record**
 - name
 - business address and telephone number
 - home address and telephone number
 - occupation
 - B. If the client an organization (not a financial institution, public body or reporting issuer)
 - **You must identify the organization. Obtain and Record**
 - incorporation or business identification number
 - place of issue of incorporation or business identification number
 - general nature of the type of business or activity

- name, position and contact information for individual who gives instructions on behalf of the organization
- C. If the client is acting for or representing a third party
- **You must identify the third party. Obtain and Record**
 - The same information for individuals and organizations as applicable
- D. If the client is an organization and the retainer involves money coming or going on behalf of the client (receiving, paying, or transferring funds)
- **You must make reasonable efforts to obtain and record**
 - name and occupation of each director (unless the organization is a securities dealer)
 - name, address and occupation of each person who owns 25% or more
 - information establishing the ownership, control and structure of the organization

Model Rule Amendment – If the client is a corporation, you must obtain and record the names of each director. You must take reasonable measures to confirm the accuracy of the information you’ve obtained, including about directors and shareholders.

Model Rule Amendment – If you are not able to obtain and verify the information required for clients that are organizations you must take reasonable measures to identify the most senior managing director of the organization and monitor the organization

Model Rule New Requirement – If the client is a trust, you must make reasonable efforts to obtain the names and addresses of all trustees and all know beneficiaries and settlors

3. Is Verification Required?

- Verification of identity is only required if the retainer involves money coming or going on behalf of the client (receiving, paying or transferring funds)
- Verification of identity is not required for certain exempt funds. Examples:
 - From a financial institution, public body or reporting issuer
 - Electronic transfer (wire transfer)
 - For your fees
 - Pursuant to a court order or as a settlement in a proceeding

Model Rules Amendment – exemptions for funds received pursuant to a court order or paid or received as a settlement in a proceeding are removed

- **If the Funds are exempt, there are no further requirements**
- **If the Funds are not exempt, you must verify your client’s identity**
- **If you (or another lawyer at your firm) have previously verified, or an agent acting on your behalf has previously verified, you can rely on that previous verification**

4. Verification Requirement

- A. If the client is an individual (including an authorized individual giving instructions on behalf of an organization) and the retainer involves money coming or going on behalf of the client (receiving, paying, or transferring funds)

- **You must immediately take reasonable steps to verify your client's identity**
 - Use what you reasonably consider to be reliable, independent source documents
 - E.g. - Government ID – driver's licence, health card, passport

Model Rule Amendment – You must immediately verify your client's identity

Model Rule Amendment – Additional Ways to Verify

- Information from the individual's Canadian credit file
- Any two pieces of information from a reliable source that contains either the individual's name and address, name and birth date, or name and confirms a deposit account, credit card, or other loan
 - E.g. – Canada Pension Plan statement, provincial benefits statement, Property tax assessment, utility bills
- These alternative verification methods should assist in circumstances where the client does not have government issued photo identification

- B. If the client is an organization and the retainer involves money coming or going on behalf of the client (receiving, paying, or transferring funds)

- **You must take reasonable steps to verify identity of the client that is an organization within 60 days**
 - Use what you reasonably consider to be reliable, independent source documents
 - If the client is a corporation
 - E.g. - certificate of corporate status, annual corporate filing
 - If the client is an organization other than a corporation (trust, partnership)
 - E.g. – trust or partnership agreement, articles of association

Model Rule Amendment – You must verify the identity of the client that is an organization within 30 days.

- C. If the client is an individual who is not "face-to-face"

- **You can comply with the identification and verification requirements by obtaining an attestation from a person who has seen the appropriate independent source documents**
 - The attestation may be from, e.g. a person entitled to administer oaths and affirmations in Canada, a dentist, a physician, an optometrist

- You can also comply if an employee of your firm, or another licensee who practices through your firm complies
- You can also comply by using an agent, if you have entered into a written agreement that sets out the steps the agent will take to comply

Model Rule Amendment – Use of Agent

- Attestation no longer required
- If the client is not face-to-face, but is in Canada and is using government issued identification, you may use an agent to verify identity (note – credit file and dual source methods of verification do not require that the client be face-to-face and may be used when the client is not present)
- If the client is not in Canada, you must use an agent
 - written agreement still required
 - you must satisfy yourself that the agent used one of the permissible methods of verification and that the information used by the agent was valid and current

Model Rule New Requirement – You must obtain from the client and record information about the source of funds

- ask your client where the funds are coming from and how the client got the funds
- this may be apparent from the information you've already obtained from the client
- if there is nothing that causes you to doubt what the client is telling you about the source of the funds there are no further requirements
- if you have concerns about the information being provided, further inquiries may be required to ensure that you are not assisting in illegal or criminal activity

Model Rule New Requirement – Monitoring

- When the retainer involves money coming or going on behalf of the client (receiving, paying or transferring funds) you must during the retainer
 - Periodically monitor the solicitor-client relationship to:
 - Determine whether the information about the source of funds and the instructions about the transaction are consistent with the purpose of the retainer and the information about the client
 - Assess whether there's risk you're assisting or encouraging fraud or other illegal activity
 - Keep a record of the measures you've taken and the information you've obtained

5. Duty to Withdraw

- During the retainer, including when you are taking steps to identify your client and verify the client's identity, if you know or ought to know that you would be assisting the client in fraud or other illegal conduct, you must withdraw from representation of the client.