

TAB 2
Report to Convocation
May 27, 2021

Professional Regulation Committee

Committee Members

Megan Shortreed (Chair)
Jacqueline Horvat (Vice-Chair)
Michelle Lomazzo (Vice-Chair)
Robert Adourian
Gerard Charette
Etienne Esquega
Julian Falconer
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Clare Sellers
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Nicholas Wright

Purpose of Report: Decision

Prepared by the Policy Division
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For Decision

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



Law Society
of Ontario

Barreau
de l'Ontario

Tab 2

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Motion

That Convocation approve the Motion at Tab 2.1, which amends the Law Society's By-Laws 7.1 and 9, effective January 1, 2022¹, in order to implement amendments to the Federation of Law Societies of Canada's Model Rules to fight money laundering and terrorist financing.²

Executive Summary

Successive Canadian governments have recognized money laundering and terrorist financing as serious threats to domestic and global safety and security that can compromise the integrity and stability of the financial sector and the broader economy.³ It has also become increasingly apparent that money laundering is a significant problem in this country.⁴

The Canadian government is under substantial pressure from the international community to address money laundering and has worked with international partners and made commitments to the international community to enact legislation aimed at helping detect and deter money laundering and the financing of terrorist activities.

While law societies have supported the government's efforts to fight money laundering and terrorist financing, they have insisted that the tools used with respect to licensees must

¹ Blacklined amendments to excerpts of By-Laws 7.1 and 9 are at Tabs 2.2 and 2.3.

² As revised in October 2018, available on [the Federation's website](#).

³ See for example *Opening Statement of the Government of Canada*, Commission of Inquiry into Money Laundering in British Columbia (<https://cullencommission.ca/files/OpeningStatement-GovernmentOfCanada.pdf>). See also *Forward by the Minister of Finance*, the Honourable Joe Oliver, Minister of Finance, in *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada* July, 2015 (Available at <https://www.canada.ca/en/department-finance/services/publications/assessment-inherent-risks-money-laundering-terrorist-financing.html>)

⁴ For instance, the US State Department has 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>).

recognize and comply with the fundamental principles of solicitor-client privilege and the independence of the bar.

As part of an effort to maintain self-regulation in this area, the Federation of Law Societies of Canada (the "Federation") enacted Model Rules to fight money laundering and terrorist financing ("AML") in 2004 and 2008. The Model Rules were subsequently implemented by all Canadian law societies.⁵

In 2016, a Federation Working Group undertook a review of the Model Rules to ensure that they remained robust and effective. In 2018, the Federation amended the Model Rules based on recommendations from the Working Group.

Most other Canadian law societies have now implemented the Model Rule amendments into their own codes of conduct.⁶

On November 29, 2019, Convocation approved amendments in principle to implement the amended Model Rules into the Law Society's By-Laws 7.1, *Operational Obligations and Responsibilities*, and 9, *Financial Transactions and Records*.

Convocation also established a Working Group of interested benchers with a mandate to work with the Professional Regulation Committee including its Chair and Vice-Chair on the proposed by-law amendments. The Working Group's final report is attached at Tab 2.4.

Implementation of the amendments detailed in the Motion at Tab 2.1 is recommended as a means to ensure that our rules aimed at fighting money laundering and terrorist financing are robust, effective, and up-to-date, and to:

- Preserve solicitor-client privilege and the independence of the bar by maintaining our own AML rules separate from the federal government's AML regime;
- Require licensees to conduct sufficient diligence on client transactions to ensure that they do not unwittingly become involved in illegal activity or act recklessly with respect to money laundering; and

⁵ *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>

⁶ The Model Rules have been implemented in all provinces other than Ontario and Quebec. In Quebec, the amendments have been passed by the Barreau du Québec but are now before the Office des Professions du Québec.

- Enhance our existing provisions aimed at combatting money laundering and terrorist financing, to preserve our regulatory authority in this area vis-à-vis the federal government.

Therefore, Convocation is asked to approve the proposed amendments to By-Laws 7.1 and 9 with a coming into force date of January 1, 2022, which will provide time for the preparation of guidance and resource materials, and for licensees to become familiar with the new rules and requirements.

Background

In 2000, the federal government enacted the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“*PCMLTFA*”).⁷ 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, on behalf of provincial and territorial law societies, responded with a two-pronged approach aimed at maintaining self-regulation in this area and preserving solicitor-client privilege:

- i. With the Law Society of British Columbia, and supported by the Canadian Bar Association, the Federation 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 by the Supreme Court and licensees are excluded from its application.⁸ The Supreme Court of Canada agreed with the Federation, and held 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.⁹ Although

⁷ S.C. 2000, c. 17, available at <https://laws-lois.justice.gc.ca/eng/acts/p-24.501/>

⁸ *Canada (Attorney General) v. Federation of Law Societies of Canada* [2015] 1 SCR 401.

⁹ *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>

the Federation's challenge was successful, the Supreme Court relied on the fact that law societies had instituted appropriate professional standards to guard against money laundering and terrorist financing. The Court also indicated that it would be possible for the government to craft a constitutionally compliant inspection regime under which it could obtain the information that it sought from lawyers.

While this litigation was ongoing, the Federation recognized the importance of this issue, and in order to maintain self-regulation on this issue, adopted the strategic priority of crafting effective AML rules that maintained solicitor-client privilege and an independent bar.¹⁰ 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 implemented by all Canadian law societies.¹¹ In Ontario, these rules were incorporated into By-Laws 7.1 and 9 at that time.¹²

As noted above, the fact that law societies had instituted appropriate professional standards to guard against money laundering and terrorist financing was a key consideration for the Supreme Court in deciding that it was not necessary to subject licensees to the federal AML scheme.¹³

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 but protect solicitor client privilege and the independence of the bar, while also educating licensees about the perils of becoming involved in this type of criminal activity.

The Federation's approach has 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. However,

¹⁰ 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).

¹¹ *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>

¹² 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*.

¹³ See *Canada (Attorney General) v. Federation of Law Societies of Canada* [2015] 1 SCR 401 at paras 104-111

the exclusion of lawyers and paralegals from the government's anti-money laundering regime is an anomaly among our peer nations and is viewed by some as problematic.¹⁴ Legal professionals, and solicitor-client privilege in particular, have been identified as blocks to effective enforcement.¹⁵

In May 2019, the Government of British Columbia established a commission of inquiry into money laundering (the "Cullen Commission"), with a mandate that includes making findings of fact with respect to:

- The acts or omissions of responsible regulatory agencies and individuals, and whether they have contributed to money laundering in the province or amount to corruption;
- The scope and effectiveness of anti-money laundering powers, duties and functions of these regulatory agencies and individuals; and
- The barriers to effective law enforcement in relation to money laundering.¹⁶

The Cullen Commission began public hearings in February 2020. From November 16 – 19, 2020, hearings included Frederica Wilson, Executive Director of the Federation, and a panel of Law Society of British Columbia that included its President, Craig Ferris and Executive Director/CEO, Don Avison. The Commission's final report is expected to address the role of lawyers in relation to money laundering.

¹⁴ 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>. "Lawyers protected from money laundering scrutiny", *The Globe and Mail*, May 20, 2019, available at <https://www.theglobeandmail.com/canada/article-lawyers-protected-from-money-laundering-scrutiny/>; "Money-laundering Investigators Stymied by Legal Loophole", *The Province*, August 24, 2015, available at <https://www.pressreader.com/canada/the-province/20150825/281492160067083>; "Canada Ignored its gigantic money laundering problem for years – and lawyers fanned the flames", *The Financial Post*, April 8, 2019, available at <https://financialpost.com/diane-francis/canada-ignored-its-gigantic-money-laundering-problem-for-years-and-lawyers-fanned-the-flames>;

¹⁵ 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>.

¹⁶ See [Commission of Inquiry into Money Laundering in British Columbia Introductory Statement from Commissioner Cullen](#).

Law Society Regulation must be effective

If law societies are to maintain their own regulation in this area and continue to protect 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 or act recklessly with respect to 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 lawyers from the legislative framework as a “significant loophole” in our AML regime;¹⁷ 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.¹⁸

In October 2017, the Federation’s Model Rules 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 Law Society of Ontario’s Professional Regulation Committee launched a call for comment about the proposed amendments.¹⁹ At its meeting in March

¹⁷ *Supra* note 3, at page 3.

¹⁸ 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.

¹⁹ See Professional Regulation Committee, Report to Convocation, December 1, 2017, at <https://lawsocietyontario.azureedge.net/media/iso/media/legacy/pdf/c/convocation-dec-2017-professional-regulation-committee-report.pdf>

2018, the Committee considered the submissions received, as well as additional comments and concerns from Committee members.

The Committee recommended that the Law Society provide feedback to the Federation, which recognized the importance of effective AML provisions, but also identified certain issues with compliance that were ultimately addressed by the Federation's Working Group in its Final Report released in October 2018.²⁰

At its meeting on October 11, 2018, the Professional Regulation Committee recommended that the Law Society of Ontario support the proposed amendments in the Working Group's Final Report 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 Trust Accounting Model Rule.²¹ The amendments, which were recommended by a Federation Working Group, build on the existing AML regime, and include new client identification and verification requirements, 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 or provision of legal services. The amendments also provide structure and context to existing and long-standing rules that are in place for Ontario licensees, such as requirements to not assist in or encourage fraud, crime, or illegal conduct.

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

- i. Guidance for the Legal Profession, aimed at providing information to legal professionals about compliance with the new Model Rules²²; and

²⁰ 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>

²¹ 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/>.

²² 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>

- ii. A Best Practices Guide for Law Societies in Canada, to assist law societies with enforcement of the new Model Rules.²³

In November 2019, Convocation approved amendments in principle to the Law Society's by-laws in order to implement the amended Model Rules. The Report to Convocation at that time emphasised a number of factors in support of implementing the Model Rule amendments including:

- The exclusion of legal professionals from the federal regime remains an anomaly among our peer nations and is regularly cited, along with the protections that are afforded by solicitor-client privilege, as a major gap in Canada's enforcement efforts by both domestic and international observers. If legal regulators do not take steps to address these concerns, rules may be imposed on licensees by the Federal Government in an effort to preserve international business and trade relationships. The Supreme Court's decision left open the possibility that the government could craft a constitutionally compliant inspection regime under which it could obtain the information that it sought from lawyers.
- The proposed amendments can be viewed as providing clarity and context to longstanding, existing obligations, such as the requirement to know your client, to understand the purpose and objectives of a retainer, and to not assist in or encourage fraud, crime, or illegal conduct.
- A recent amendment to subsection 462.31(1) of the *Criminal Code* introduced an alternative standard of recklessness to the offence of laundering the proceeds of crime. Licensees who are not alert to, or who ignore known warning signs and red flags could now face criminal prosecution for money-laundering. As criminal courts begin to interpret this recklessness standard, they are likely to look to the rules in place in most provinces, which have now implemented the Model Rules. If Ontario does not implement these amendments, our licensees will lack direction and guidance about accepted diligence standards, which may lead to allegations or charges of recklessness.

Convocation also established a working group of interested Benchers with a mandate to work with the Chair and Vice-Chair of the Professional Regulation Committee on the proposed amendments.

²³ *The Best Practices Guide for Law Societies in Canada* is not publicly available.

In September 2020, the Working Group provided the report at Tab 2.4 to the Professional Regulation Committee and a majority of the Committee approved a recommendation that the amendments in the Motion at Tab 2.1 be provided to Convocation for adoption.

The Amendments

Proposed amendments to By-Laws 7.1 and 9 implement the Model Rule changes. A summary of the amendments is provided below.

A. Client Identification and Verification

Amendments to the Client Identification and Verification requirements in By-Law 7.1 are the most extensive of the proposed changes. Attached at Tab 2.5 is an “annotated” copy of the By-Law, which provides an overview of the proposed changes.

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.²⁴ The amendments include:

- A requirement to identify and record the source of client funds for a transaction. Where a retainer involves the receipt, payment, or transfer of funds, licensees are required to obtain and record information from their client about the source of funds for the transaction. Licensees are not required to obtain that information from other parties to the transaction or verify the information from the client about the source of the funds. Licensees are, however, required to exercise their professional judgment. Where the information provided by the client is inconsistent with the terms of the retainer or what the licensee knows or think they know about the client, additional due diligence may be required. Such instances are likely to be rare²⁵;

²⁴ 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>).

²⁵ A sample resource document that outlines the steps in the source of funds inquiry is at Tab 2.6.

- A requirement that a licensee “must” obtain and verify the identity of individual clients and corporate directors, where the client is an organization;²⁶
- A reduction in the timing for verifying the identity of an organization from 60 to 30 days;
- If the licensee is unable to identify or verify the identity of directors, shareholders, and owners of an entity, including beneficial owners, a new provision requires that the licensee take reasonable measures to identify the most senior managing officer of the entity, and to engage in periodic monitoring of the legal services they are providing to assess the risk that they may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct;
- New requirements with respect to the documents that must be used to verify the identity of individuals, including single process methods (government issued identification or information from the individual's credit file) or a dual process method using information from two different and reliable independent sources;
- New requirements for the identification and verification of clients who are minors;
- Changes to the use of agents to verify the identity of individuals who reside outside of the country, including a requirement that the licensee and the agent have an agreement in writing, and that the licensee satisfy themselves that the information obtained by the agent is valid and current and was obtained in accordance with the single or dual process methods; and
- The introduction of a new monitoring requirement applicable to on-going retainers that involve the receipt, payment, or transfer of funds. In those

²⁶ The working group had initially proposed extending this absolute requirement to all persons who own 25% or more of an organization and all trustees, beneficiaries, and settlors of trusts. Feedback from the Law Society expressed significant concern about this requirement. In response, the final amendments maintain the requirement that a licensee “make reasonable efforts” to identify beneficial owners of 25% or more of the organization, all trustees and known beneficiaries where the client is a trust, and all information establishing the ownership, control and structure of the organization. See subsection 6(7) of the Model Rule on Client Identification and Verification. In addition, in June, 2019, the Department of Finance announced that the federal government would open consultations with provinces and territories toward the creation of a beneficial ownership public registry. See *Government of Canada Leads National Response to Money Laundering and Terrorist Financing*. Department of Finance, Government of Canada. Available at <https://www.fin.gc.ca/n19/19-063-eng.asp>.

circumstances, licensees are required to periodically monitor the legal services they are providing to assess the risk that they may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct. Licensees are not required to monitor their client's business or activities, but rather the retainer with their client in order to ensure that the client's instructions, the information obtained about the client's activities, and the source of funds used in the transaction are consistent with the purpose of the retainer and the information the licensee knows about the client.²⁷

The amendments can be viewed as adding more structure and context to existing long standing requirements, in particular the requirements that licensees:

- Not knowingly assist in or encourage fraud, crime, or illegal conduct.
- Not do or omit to do anything that a licensee ought to know would assist in, encourage or facilitate any illegal conduct by a client or any other persons.
- Make reasonable efforts to ascertain the purpose and objectives of a retainer and to obtain information about the client to fulfil that obligation.
- Be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client or any other person.²⁸

To aid with compliance, licensees will be provided with access to guidance materials prepared by the Law Society and the Federation, which include 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.²⁹

B. Cash Transactions

The amendments to the Cash Transactions Model Rule provided clarification about the amount of cash that may be received in respect of any one client matter, removed certain exemptions to the rule, and amended certain definitions to track the Federal regulations. Proposed amendments to By-Law 9 implement these changes.

²⁷ A sample resource document that outlines the steps in the monitoring requirement is attached at Tab 2.7.

²⁸ See Rules 3.2-7 – 3.2-7.3 and commentary of the *Rules of Professional Conduct*, and Subrules 3.02(4) and (5) of the *Paralegal Rules of Conduct*.

²⁹ See for instance pages 18-20 of the Guidance for the Legal Profession.

Specifically, although the Federation Working Group concluded that the quantum of the cash threshold (\$7,500) remained appropriate, it 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 Council.³⁰ Although this is consistent with the Law Society's interpretation and application of the existing rule, a minor amendment to section 4 is recommended for clarity.

The Model Rule amendments also removed the exception related to cash received pursuant to an order of a tribunal. The Working Group concluded it was of limited value and posed a risk of money laundering. This amendment is also recommended in section 6.

C. Trust Accounting

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.³¹

In Ontario a similar restriction has been in place since 2011 in Rule 3.2-7.3 of the *Rules of Professional Conduct* and Subrule 3.02(6) of the *Paralegal Rules of Conduct*. However, for clarity and consistency an amendment to subsection 8(2) of By-Law 9 is recommended to provide that a licensee shall not pay into a trust account money that is not directly related to legal services being provided by the licensee.

The amended Model Rule also provides an additional requirement that legal professionals pay out money held in a trust account as soon as practicable upon completion of the legal services. This new provision is recommended as a means of discouraging the 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.³²

A proposed new section 8.1 would incorporate this requirement into By-Law 9 and provides that a licensee shall not hold money in trust beyond a minimally reasonable amount of time after the legal services have been performed.

³⁰ 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>.

³¹ 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>.

³² 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

Recommendation and Rationale

The Professional Regulation Committee recommends that Convocation approve the amendments detailed in the Motion at Tab 2.1 with a coming into force date of January 1, 2022. This will provide time for the preparation of guidance and resource materials, and for licensees to become familiar with the new rules and requirements.

The amendments are recommended³³ in order to:

- Preserve solicitor-client privilege and the independence of the bar by maintaining independent AML rules and ensuring that licensees are not subject to federal government reporting requirements.
 - Updating the anti-money laundering and terrorist financing requirements for licensees ensures that licensees continue to be subject to appropriate and robust professional standards.
 - A key consideration for the Supreme Court in deciding that it was not necessary to subject licensees to the federal AML scheme was the fact that law societies had developed appropriate professional standards to guard against money laundering and terrorist financing, and that those are nationally consistent. If our rules are not robust, effective, and up-to-date, this rationale becomes tenuous and the federal regulation of licensees in a constitutionally compliant manner becomes more likely.
 - If we fail to maintain a robust AML scheme for licensees our position as a competent and effective regulator is weakened, which impairs our ability to work collaboratively with the Federation and federal government to address this serious criminal activity.
 - It may also prove prudent to have robust, nationally consistent rules in place before the the Cullen Commission releases its final report, which is expected in December 2021.
- Require that licensees conduct sufficient diligence with respect to client transactions so as to ensure that they do not willingly or unwittingly become involved in illegal activity or act recklessly with respect to money laundering.
 - In June 2019, subsection 462.31(1) of the *Criminal Code* was amended to include an additional mental element of recklessness to the offence of money

³³ A letter in support of the amendments from Steve Raby Q.C, President of the Federation of Law Societies of Canada is attached at Tab 2.9.

- laundering. Criminal courts across the country must now begin to determine what constitutes recklessness with respect to this offence.
- If lawyer conduct is involved, it is reasonable to assume that courts will look to the requirements in place in most provinces to determine whether the lawyer has acted recklessly.
 - Regardless of the requirements in place in this province, Ontario licensees who fail to comply with the Model Code standards may be at risk of being found to have been reckless with respect to money laundering.
 - If Ontario does not implement these amendments, our licensees will lack direction and guidance about expected diligence standards, which may lead to allegations or charges of recklessness.
- Provide context and guidance with respect to long standing professional conduct obligations.
 - Licensees are already subject to requirements to know their clients, to not knowingly assist in or encourage any dishonesty, fraud, crime, or other illegal conduct, and to guard against becoming the tool or dupe of an unscrupulous client or person associated with a client.
 - Although the proposed amendments do impose new obligations, they will also assist licensees in complying with these existing requirements. For instance, where a retainer involves the receipt, payment, or transfer of funds, a reasonable way to ensure that the lawyer is not assisting in fraud or other illegal activity is to inquire about the source of the client's funds. Recording the information provided by the client ensures that the lawyer has a record that shows that they did not act recklessly or knowingly assist in illegal activity. Similarly, where a licensee has a long-term retainer, ensuring that they are not becoming the tool or dupe of the client would necessarily involve periodically considering the terms of the retainer and the source of the funds that are being provided by or to the client through their lawyer or paralegal.
 - Ensure minimal impact on licensee professional activities.
 - When compared to federal reporting requirements, the new requirements are not burdensome.³⁴ They are also developed by law society regulators who are aware of the realities of a legal services business and are responsive to those realities in a manner that might not be expected of a government regulator.

³⁴ At Tab 2.10 is an overview of the requirements for entities subject to the *Proceeds of Crime Money Laundering and Terrorist Financing Act* S.C. 2000, c. 17.

- Licensees will be required to make additional inquiries and record what they are told by their clients, such as about the source of the client's funds; however, the amendments do not require that licensees verify that information or conduct layers of investigation.

Implementation

Convocation is asked to approve the amendments detailed in the Motion at Tab 2.1 with a coming into force date of January 1, 2022. This timeline provides the Law Society with an opportunity to create and publish extensive resource materials that will provide guidance to licensees and assist with their efforts to implement the new requirements into their practices.

The Law Society's resource and education plan for implementation will be developed in the Professional Development & Competence Division (PD&C), and will provide a continuum of supports to assist licensees with understanding and complying with the new requirements. Specifically, PD&C will develop resources that follow best practices in adult education; deliver just-in-time supports; and produce educational programming that is responsive to what licensees need to know.

Most of the proposed amendments build on existing identification and verification requirements, which were initially introduced in 2008. The LSO has a number of existing resources in place that address those requirements. These resources will be updated as necessary to incorporate new requirements.

Additional resources and supports will include:

- Infographics that offer a simplified overview of the processes to be followed.
- An online decision-making tool that helps licensees determine what standards apply to their situation, provides step-by-step guidance to assist with compliance, and directs them to additional supports and resources.
- Practice tools and checklists that facilitate risk identification and resolution. Sample client identification and verification checklists and sample documents listing required steps for the new source of funds inquiry and the ongoing monitoring requirement are attached at Tabs 2.6 – 2.8.

Next Steps

If the amendments are approved, PD&C will begin to operationalize the resource and education plan as detailed above. Resource materials will be drafted and updated as appropriate to provide direction and guidance to licensees with respect to the new requirements. Leading to the amendments coming into force, resource materials will be updated as needed to incorporate feedback and questions from licensees.

A Continuing Professional Development program detailing the new requirements will be scheduled for the fall (September or October), with on-demand playback options for licensees.

LAW SOCIETY OF ONTARIO
BY-LAWS MADE UNDER
SUBSECTIONS 62 (0.1) AND (1) OF THE LAW SOCIETY ACT

MOTION TO BE MOVED AT THE MEETING OF CONVOCATION ON MAY 27, 2021

MOVED BY

SECONDED BY

THAT By-Laws 7.1 [Operational Obligations and Responsibilities] and 9 [Financial Transactions and Records], in force immediately before this motion is made, be amended as follows, effective January 1, 2022:

**BY-LAW 7.1
[OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES]**

1. The definition of “financial institution” contained in section 20 of the English version of By-Law 7.1 is amended by,

(a) revoking clause (a) and substituting the following:

(a) a bank that is regulated by the *Bank Act* (Canada),

(b) revoking clauses (e) and (f) and substituting the following:

(e) a company that is regulated by the *Trust and Loan Companies Act* (Canada),

(f) a loan or trust corporation that is regulated by an Act of a province or territory of Canada,

(f.1) a financial services cooperative that is regulated by *An Act respecting financial services cooperatives* (Quebec) or *An Act respecting the Mouvement Desjardins* (Quebec) and that is not a caisse populaire,

(f.2) a central cooperative credit society within the meaning of section 2 of the *Cooperative Credit Associations Act* (Canada) or a credit union central or a federation of credit unions or caisses populaires that is regulated by an Act of a province, other than Quebec, or territory of Canada,

2. The definition of “établissement financier” contained in section 20 of the French version of By-Law 7.1 is amended by,

(a) revoking clause a) and substituting the following:

a) d'une banque qui est régie par la *Loi sur les Banques* (Canada) ;

(b) revoking clauses e) and f) and substituting the following:

e) d'une société qui est régie par *Loi sur les sociétés de fiducie et de prêt* (Canada) ;

f) d'une société de prêt ou de fiducie qui est régie par une loi d'une province ou d'un territoire du Canada ;

(f.1) d'une coopérative de services financiers qui est régie par la *Loi sur les coopératives de services financiers* (Québec) ou la *Loi sur le Mouvement Desjardins* (Québec) et qui n'est pas une caisse populaire ;

(f.2) d'une coopérative de crédit centrale au sens de l'article 2 de la *Loi sur les associations coopératives de crédit* (Canada), d'une centrale de caisses d'épargne ou d'une fédération de caisses d'épargne ou de caisses populaires qui est régie par une loi d'une province, autre que le Québec, ou d'un territoire du Canada ;

3. The definition of "securities dealer" contained in section 20 of the English version of By-Law 7.1 is amended by adding ",excluding any person who acts exclusively on behalf of such a person" at the end.

4. The definition of "courtier en valeurs mobilières" contained in section 20 of the French version of By-Law 7.1 is amended by adding ", à l'exclusion de toute personne qui agit seulement au nom d'une telle personne" at the end.

5. Section 20 of the English version of By-Law 7.1 is further amended by striking out the definition of "proceeding".

6. Section 20 of the French version of By-Law 7.1 is further amended by striking out the definition of "instance".

7. Subclause 22 (1) (b) (i) of the English version of By-Law 7.1 is amended by striking out "subsection 23 (2)" and substituting "subsections 23 (2) and (2.1)".

8. Subclause 22 (1) b) (i) of the French version of By-Law 7.1 is amended by striking out "paragraphe 23 (2)" and substituting "paragraphe 23 (2) et (2.1)".

9. Subsection 22 (3) of the English version of By-Law 7.1 is amended by:

(a) striking out "subsection 23 (2)" and substituting "subsections 23 (2) and (2.1)"; and

(b) revoking clauses (d) to (h) and substituting the following:

(d) paid to pay a fine, a penalty or bail;

(e) paid or received for,

- (i) fees billed or to be billed to a client for legal services provided or to be provided to the client by the licensee or another licensee who practises law or provides legal services through the licensee's firm,
 - (ii) disbursements, or
 - (iii) expenses; or
- (f) paid, received or transferred by electronic funds transfer.

10. Subsection 22 (3) of the French version of By-Law 7.1 is amended by:

- (a) striking out "paragraphe 23 (2)" and substituting "paragraphes 23 (2) et (2.1)"; and**
- (b) revoking clauses d) to h) and substituting the following:**

- d) versés pour payer une amende, une sanction ou une caution ;
- e) payés ou reçus pour :

(i) les honoraires facturés ou devant être facturés à un client pour des services juridiques fournis ou devant être fournis au client par le titulaire de permis ou un autre titulaire de permis qui exerce le droit ou fournit des services juridiques par le biais d'un cabinet ;

- (ii) les débours ;
- (iii) les dépenses ;

- f) payés, reçus ou virés par voie électronique.

11. Subsection 22 (4) of the English version of By-Law 7.1 is amended by striking out "subsection 23 (2)" and substituting "subsection 23 (2) and (2.1)".

12. Subsection 22 (4) of the French version of By-Law 7.1 is amended by striking out "paragraphe 23 (2)" and substituting "paragraphes 23 (2) and (2.1)".

13. Subsection 23 (1) of the English version of By-Law 7.1 is amended by,

- (a) adding ", if applicable" at the the end of paragraph 6; and**
- (b) striking out "who gives" and substituting "who is authorized to give" in paragraph 7.**

14. Subsection 23 (1) of the French version of By-Law 7.1 is amended by,

- (a) adding ", le cas échéant" at the end of paragraph 6; and**
- (b) striking out "qui donne" and substituting "qui est autorisé à donner" in paragraph 7.**

15. Subsection 23 (2) to (4) of the English version of By-Law 7.1 are revoked and the following substituted:

Additional client identification: activities mentioned in clause 22 (1) (b)

(2) When a licensee is engaged in the activities described in clause 22 (1) (b), in addition to complying with the client identification requirements set out in subsection (1), the licensee shall obtain from the client information about the source of the funds being received, paid or transferred.

Additional client identification when organization involved: activities mentioned in clause 22 (1) (b)

(2.1) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client or third party that the client is acting for or representing is an organization, in addition to complying with the client identification requirements set out in subsections (1) and (2), the licensee shall,

(a) obtain the name of each director of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain,

(i) the names and addresses of the persons who own, directly or indirectly, twenty-five percent or more of the organization or of the shares of the organization, if applicable,

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, if applicable, and

(iii) information establishing the ownership, control and structure of the organization.

Alternate requirement when unable to meet identification and other requirements re organization

(2.2) If a licensee is unable to obtain the information mentioned in subsection (2.1) or to confirm the accuracy of the information as required by subsection (12.2), the licensee shall,

(a) take reasonable measures to identify the most senior managing officer of the organization;

(b) determine whether the client's information in respect of their activities and the source of the funds and the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required under subsection (2.1) and record the results of the determination and the date on which it was made; and

(c) assess whether there is a risk that the licensee may be assisting in or encouraging fraud or other illegal conduct and record the results of the assessment and the date on which it was made.

Client identification: identification by others in licensee's firm

(2.3) A licensee complies with the identification requirements set out in subsections (1) to (2.2) if an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements.

Client verification requirements

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall verify the identity of the client, including the individuals mentioned in paragraph (1) 7, and any third party that the client is acting for or representing using the documents, data or information mentioned in subsection (7).

16. Subsection 23 (2) to (4) of the French version of By-Law 7.1 are revoked and the following substituted:

Identification additionnelle des clients : activités mentionnées à l'alinéa 22 (1) b)

(2) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), il doit, en plus de se conformer aux exigences d'identification des clients du paragraphe (1), obtenir du client les renseignements sur la source des fonds reçus, payés ou virés.

Identification additionnelle des clients quand un organisme est visé : activités mentionnées à l'alinéa 22 (1) b)

(2.1) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), et que le client ou le tiers pour lequel le client agit ou qu'il représente est un organisme, en plus de se conformer aux exigences d'identification des clients des paragraphes (1) et (2), il doit :

- a) obtenir le nom de chaque administrateur de l'organisme, autre qu'un organisme qui est un courtier en valeurs mobilières ;
- b) prendre des mesures raisonnables pour obtenir :
 - (i) le nom et l'adresse de chaque personne qui détient, directement ou indirectement, 25 pour cent ou plus de l'organisme ou des actions de l'organisme, le cas échéant ;
 - (ii) le nom et l'adresse de chaque fiduciaire et des bénéficiaires et constituants connus, le cas échéant ;
 - (iii) les renseignements établissant la propriété, le contrôle et la structure de l'organisme.

Autre exigence en cas d'incapacité à satisfaire aux exigences d'identification et autres exigences concernant l'organisme

(2.2) Si un titulaire de permis n'est pas en mesure d'obtenir les renseignements mentionnés au paragraphe (2.1) ou de confirmer l'exactitude de ces renseignements tel que requis par le paragraphe (12.2), il doit :

- a) prendre des mesures raisonnables pour identifier le dirigeant le plus élevé dans la hiérarchie de l'organisme ;
- b) déterminer si les renseignements du client concernant ses activités et la source des fonds et ses instructions quant à la transaction sont conformes à l'objet du mandat et aux renseignements obtenus sur le client tel que requis par le paragraphe (2.1), et en consigner les résultats et la date ;
- c) vérifier s'il y a un risque que le titulaire de permis contribue ou pourrait contribuer à la commission d'une fraude ou autre conduite illicite et en consigner les résultats et la date.

Identification des clients par d'autres personnes du cabinet du titulaire de permis

(2.3) Le titulaire de permis se conforme aux exigences d'identification des clients visées aux paragraphes (1) à (2.2) si s'y conforme un employé de son cabinet ou d'un ou d'une autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant son mandataire.

Exigences de vérification

(4) Le titulaire de permis qui se livre aux activités visées à l'alinéa 22 (1) b) vérifie l'identité du client, y compris les personnes mentionnées à l'alinéa (1) 7, et de tout tiers dont il est le mandataire, en se servant des documents, des données ou des renseignements mentionnés au paragraphe (7).

17. Subsection 23 (5) of the English version of By-Law 7.1 is amended by striking out "paragraph 7" and substituting "paragraph (1) 7".

18. Subsection 23 (5) of the French version of By-Law 7.1 is amended by striking out “alinéa 7” and substituting “alinéa (1) 7”.

19. Subsections 23 (6) to (12) of the English version of By-Law 7.1 are revoked and the following substituted:

Timing of verification: organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) immediately and, in all cases, by not later than 30 days after first engaging in the activities described in clause 22 (1) (b).

Documents, data and information for verification

(7) Subject to subsection (8), the following are the documents, data and information for the purposes of subsection (4):

1. If the client or third party is an individual,
 - i. a government issued photo identification document, excluding a document that is issued by a municipal government,
 - ii. information in the individual’s credit file that is located in Canada and has been in existence for at least three years,
 - iii. any two of the following pieces of information, each from a different source that is not the individual, the licensee or an individual acting on behalf of the licensee pursuant to subsection (11),
 - A. information from a reliable source that contains the individual’s name and address,
 - B. information from a reliable source that contains the individual’s name and date of birth,
 - C. information that contains the individual’s name and confirms that they have a deposit account, credit card or other loan amount with a financial institution.
2. If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, which includes the names of the organization’s directors, if applicable such as,
 - i. a certificate of corporate status issued by a public body,
 - ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - iii. a copy of a similar record obtained from a public body that confirms the organization’s existence.
3. If the client or third party is an organization other than a corporation or society that is not registered in any government registry, such as a trust or partnership, a copy of the organization’s constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.

Requirements re documents, data and information used for verification

(8) For the purposes of subsection (4), documents and records used must be authentic, valid and current and other information used must be valid and current.

Client verification: individual younger than 12 years

(9) If a licensee is required to verify the identity of an individual who is under twelve years of age, the licensee shall verify the identity of a parent or guardian.

Client verification: individual 12 years or older but younger than 15 years

(10) If a licensee is required to verify the identity of an individual who is at least twelve years of age but not more than 15 years of age, the licensee may do so by obtaining information from a reliable source that contains the name and address of a parent or guardian and confirming that the address of the parent or guardian matches the individual's address.

Client verification: use of agent, etc.

(11) A licensee complies with the verification requirements set out in subsection (4) if,

(a) an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements; or

(b) an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that,

(i) the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement for this purpose, and

(ii) the licensee obtains from the individual the information obtained by them under the agreement, satisfies themselves that the information is valid and current and satisfies themselves that the individual complied with subsections (4) to (10).

Client verification: previous verification

(12) A licensee complies with the verification requirements set out in subsection (4),

(a) if the licensee has previously complied with the verification requirements set out in subsection (4) and has no reason to believe the information or the accuracy of the information has changed; or

(b) an individual acting on behalf of the licensee under subsection (11) previously complied with the verification requirements set out in subsection (4) either acting in their own capacity at the time, whether or not they were required to comply with the verification requirements set out in subsection (4), or acting on behalf of another licensee at the time pursuant to an agreement under subsection (11).

Recording information

(12.1) The licensee shall record all information obtained for the purposes of subsections (1) to (2.2) and the date on which it was obtained.

Additional requirements in identification of organization

(12.2) If the licensee is identifying an organization, in addition to recording the information mentioned in subsection (12.1), the licensee shall,

(a) take reasonable measures to confirm the accuracy of the information obtained for the purposes of subsection (2.1); and

(b) record the measures taken to confirm the accuracy of the information obtained for the purposes of subsections (2.1) and the date on which the measures were taken.

20. Subsections 23 (6) to (12) of the French version of By-Law 7.1 are revoked and the following substituted:

Moment de la vérification des organismes

(6) Le titulaire de permis doit vérifier l'identité de l'organisme mentionné au paragraphe (1) immédiatement et, dans tous les cas, au plus tard 30 jours dès le moment où il se livre aux activités visées à l'alinéa 22 (1) b).

Documents, données et renseignements pour la vérification

(7) Sous réserve du paragraphe (8), les documents, données et renseignements visés au paragraphe (4) peuvent inclure :

1. Si le client ou le tiers est un particulier :
 - i. une pièce d'identité valide avec photo émise par le gouvernement, à l'exclusion d'un document qui est délivré par une administration municipale ;
 - ii. des renseignements sur le dossier de crédit de la personne, situé au Canada et existant depuis au moins trois ans ;
 - iii. l'un ou l'autre des documents suivants, chacun provenant d'une source différente qui n'est pas la personne, le titulaire de permis ou un mandataire du titulaire de permis au sens du paragraphe (11) :
 - A. renseignements d'une source fiable qui contiennent le nom et l'adresse de la personne ;
 - B. renseignements d'une source fiable qui contiennent le nom et la date de naissance de la personne ;
 - C. renseignements qui contiennent le nom de la personne et qui confirment qu'elle a un compte de banque, une carte de crédit ou un prêt d'un établissement financier.
2. Si le client ou le tiers est un organisme, tel qu'une personne morale ou une société formée ou enregistrée conformément à une disposition législative habilitante, une confirmation écrite provenant d'un registre du gouvernement quant à l'existence, au nom et à l'adresse de l'organisme, incluant le nom de ses administrateurs, s'il y a lieu, tel que :
 - i. un certificat de constitution délivré par un organisme public ;
 - ii. une copie, obtenue d'un organisme public, d'un document qu'il est tenu de déposer annuellement aux termes de la loi ;
 - iii. une copie, obtenue d'un organisme public, d'un document semblable qui confirme son existence.
3. Si le client ou le tiers est un organisme, autre qu'une personne morale ou une société, qui n'est pas enregistré dans un registre du gouvernement, tel qu'une société de fiducie ou une société de personnes, une copie des actes constitutifs de l'organisme, tels qu'une convention de fiducie ou de société, un acte d'association ou tout autre document semblable qui confirme son existence en tant qu'organisme.

Exigences concernant les documents, les données et les renseignements utilisés pour la vérification

(8) Pour l'application du paragraphe (4), les documents et les dossiers utilisés doivent être authentiques, valides et à jour et les autres renseignements utilisés doivent être valides et à jour.

Vérification de l'identité d'un client de moins de 12 ans

(9) Si le titulaire de permis doit vérifier l'identité d'une personne de moins de 12 ans, il doit vérifier l'identité d'un des parents ou du tuteur.

Vérification de l'identité d'un client âgé de 12 ans à 15 ans

(10) Si le titulaire de permis doit vérifier l'identité d'une personne âgée de 12 ans à 15 ans, il doit le faire en obtenant les renseignements d'une source fiable qui donnent le nom et l'adresse d'un des parents ou du tuteur, et confirmer que cette adresse correspond à l'adresse de la personne.

Vérification de l'identité d'un client : recours à des mandataires

(11) Le titulaire de permis se conforme aux exigences de vérification du paragraphe (4) si, selon le cas :

a) un employé de son cabinet ou d'un autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant leur mandataire, s'y conforme ;
b) un particulier qui n'est pas visé à l'alinéa a), mais qui est son mandataire, s'y conforme, à la condition :

(i) que lui-même et ce particulier signent, avant que ce dernier ne devienne son mandataire, une entente à cette fin ;

(ii) que le titulaire de permis obtienne du particulier les renseignements que ce dernier a obtenus en vertu de l'entente, qu'il soit convaincu que les renseignements sont valides et à jour et que le particulier se conforme aux paragraphes (4) à (10).

Vérifications antérieures

(12) Le titulaire de permis se conforme aux exigences de vérification du paragraphe (4) si, selon le cas :

a) il s'est déjà conformé aux exigences de vérification du paragraphe (4) et n'a pas de raison de croire que les renseignements ou leur exactitude ont changé ;

b) un particulier qui est son mandataire au sens du paragraphe (11) s'est déjà conformé aux exigences de vérification du paragraphe (4) soit à titre personnel à ce moment-là, qu'il ait été ou non tenu de se conformer aux exigences de vérification du paragraphe (4), ou au nom d'un autre titulaire de permis conformément à une entente visée par le paragraphe (11).

Consignation des renseignements

(12.1) Le titulaire de permis consigne tous les renseignements obtenus pour l'application des paragraphes (1) à (2.2) et la date de leur obtention.

Exigences additionnelles pour identifier des organismes

(12.2) Si le titulaire de permis identifie un organisme, après avoir consigné les renseignements conformément au paragraphe (12.1), il doit :

a) prendre des mesures raisonnables pour confirmer l'exactitude des renseignements obtenus pour l'application du paragraphe (2.1) ;

b) consigner les mesures prises pour confirmer l'exactitude des renseignements obtenus pour l'application du paragraphe (2.1) et la date à laquelle ces mesures ont été prises.

21. The marginal note to subsection 23 (13) of the English version of By-Law 7.1 is amended by adding "of documents" after "Copies".

22. The marginal note to subsection 23 (13) of the French version of By-Law 7.1 is amended by adding “de documents” after “Obtention de copies”.

23. Section 23 of the English version of By-Law 7.1 is further amended by adding the following subsection:

Document retention: form

(15) For the purposes of subsection (14), documents may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

24. Section 23 of the French version of By-Law 7.1 is further amended by adding the following subsection:

Format de conservation des documents

(15) Pour l'application du paragraphe (14), les documents peuvent être conservés dans un format lisible par machine ou électronique, si une copie papier peut en être facilement produite.

25. Section 24 of the English version of By-Law 7.1 is amended by striking out “section 23” and substituting “section 23 or 23.1”.

26. Section 24 of the French version of By-Law 7.1 is amended by striking out “article 23” and substituting “articles 23 ou 23.1”.

27. The English version the By-Law is further amended by adding the following section:

Monitoring

23.1. During a retainer in which the licensee engages in the activities described in 22 (1) (b), the licensee shall,

(a) periodically monitor the professional business relationship with the client for the purposes of,

(i) determining whether the client's information in respect of their activities and the source of funds and the client's instructions in respect of the transactions are consistent with the purpose of the retainer and the information obtained about the client and required under section 23, and

(ii) assessing whether there is a risk that the licensee may be assisting or encouraging fraud or other illegal conduct; and

(b) keep a record of the measures taken and the information obtained with respect to the licensee's activities as mentioned in subclause (a) (i) and the date on which the measures were taken and the information obtained.

28. The French version the By-Law is further amended by adding the following section:

Surveillance

23.1. Au cours d'un mandat dans lequel le titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), le titulaire de permis doit :

a) surveiller régulièrement la relation professionnelle avec le client aux fins suivantes :

(i) déterminer si les renseignements fournis par le client relativement à ses activités et à la provenance des fonds ainsi que les instructions du client relativement aux transactions sont conformes à l'objet du mandat et aux renseignements obtenus sur le client et exigés en vertu de l'article 23 ;

(ii) évaluer s'il y a un risque que le titulaire de permis contribue ou pourrait contribuer à la commission d'une fraude ou de toute autre conduite illicite ;

b) conserver un dossier des mesures prises et des renseignements obtenus relativement aux activités du titulaire de permis visées au sous-alinéa a) (i) et la date à laquelle les mesures ont été prises et les renseignements obtenus.

BY-LAW 9
[FINANCIAL TRANSACTIONS AND RECORDS]

29. Section 3 of the English version of By-Law 9 is amended by,

- (a) adding "or right to or" before "interest" in the definition of "funds"; and**
(b) deleting the definition of "public body" and substituting the following:

"public body" means,

(a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,

(b) a municipality incorporated by or under an Act of a province or territory of Canada, including a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality, any other incorporated municipal body and an agent of any of them,

(c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in the *Municipal Act* and any similar body incorporated under the law of another province or territory,

(d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,

(e) a body incorporated by or under an Act of Canada or of a province or territory of Canada for a public purpose, or

(f) a subsidiary of an entity mentioned in clauses (a) to (e) where the financial statements of the subsidiary are consolidated with the financial statements of the entity.

30. Section 3 of the French version of By-Law 9 is amended by,

- (a) replace “d’un intérêt” with “du droit à un intérêt ou à un intérêt” in the definition of “effets”; and
(b) deleting the definition of “organisme public” and substituting the following:

« organisme public » S’entend :

- a) d’un ministère, service ou mandataire du gouvernement du Canada ou d’une province ou d’un territoire du Canada,
- b) d’une municipalité constituée en personne morale en vertu d’une loi d’une province ou d’un territoire du Canada, y compris une ville, un village, une municipalité métropolitaine ou régionale, un canton, un district, un comté, une municipalité rurale, tout autre organisme municipal constitué en personne morale et un mandataire de l’un d’eux ;
- c) du conseil local d’une municipalité constituée en personne morale par ou en vertu d’une loi d’une province ou d’un territoire du Canada, y compris tout conseil local tel que défini dans la *Loi sur les municipalités* et tout organisme similaire constitué en personne morale en vertu d’une loi d’une autre province ou d’un autre territoire ;
- d) d’un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la *Loi sur la taxe d’accise*, ou tout mandataire de celle-ci ;
- e) d’un organisme constitué en société par ou en vertu d’une loi du Canada ou d’une province ou d’un territoire du Canada à des fins publiques ;
- f) d’une filiale d’une entité mentionnée aux alinéas a) à e) lorsque les états financiers de la filiale sont consolidés avec les états financiers de l’entité.

31. Subsection 4 (1) of the English version of By-Law 9 is amended by striking out “7,500 or more” and substituting “more than 7,500”.

32. Subsection 4 (1) of the French version of By-Law 9 is amended by striking out “7 500 \$ ou plus” and substituting “plus de 7 500 \$”.

33. Section 6 of the English version of By-Law 9 is revoked and the following substituted:

Exceptions

6. Despite section 5, section 4 does not apply when the licensee, in connection with the provision of legal services by the licensee,

(a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a financial services cooperative that is regulated by *An Act respecting financial services cooperatives* (Quebec) or *An Act respecting the Mouvement Desjardins* (Quebec) and that is not a caisse populaire, a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial, other than Quebec, or territorial Act, a company that is regulated by the *Trust and Loan Companies Act* (Canada), a trust company or loan company that is regulated by a provincial or territorial

Act or a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

(b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;

(c) receives cash to pay a fine, a penalty or bail; or

(d) receives cash for fees, disbursements or expenses, provided that any refund out of such receipts is also made in cash.

34. Section 6 of the French version of By-Law 9 is revoked and the following substituted:

Exceptions

6. Malgré l'article 5, l'article 4 ne s'applique pas au titulaire de permis lorsque celui-ci, à l'égard de sa prestation de services juridiques :

a) reçoit des espèces d'un organisme public, d'une banque étrangère autorisée – au sens de l'article 2 de la *Loi sur les banques* – dans le cadre de ses activités au Canada ou d'une banque régie par la *Loi sur les banques*, d'une coopérative de crédit, d'une caisse d'épargne et de crédit ou d'une caisse populaire régie par une loi provinciale ou territoriale, d'une association régie par la *Loi sur les associations coopératives de crédit* (Canada), d'une coopérative de services financiers régie par la *Loi sur les coopératives de services financiers* (Québec) ou par la *Loi sur le Mouvement Desjardins* (Québec) et qui n'est pas une caisse populaire, une centrale de caisses de crédit au sens de l'article 2 de la *Loi sur les associations coopératives de crédit* (Canada) ou une fédération de caisses d'épargne ou de caisses populaires qui est régie par une loi d'une province, autre que le Québec, ou d'un territoire, d'une société régie par la *Loi sur les sociétés de fiducie et de prêt* (Canada), d'une société de fiducie ou de crédit régie par une loi provinciale ou territoriale ou un ministère ou un mandataire de Sa Majesté du chef du Canada ou d'une province ou d'un territoire lorsque le ministère ou le mandataire accepte des obligations de dépôt dans le cadre de la prestation de services financiers au public ;

b) reçoit des espèces d'un agent de la paix, d'un organisme d'application de la loi ou d'un autre agent de la Couronne agissant à titre officiel ;

c) reçoit des espèces pour payer une amende, une pénalité ou une caution ;

d) reçoit des espèces pour des honoraires, des débours ou des dépenses, à condition que tout remboursement de ces produits soit également effectué en espèces.

35. Subsection 8 (2) of the English version of By-Law 9 is amended by adding the following paragraph:

3. Money that is not directly related to legal services being provided by the licensee.

36. Subsection 8 (2) of the French version of By-Law 9 is amended by adding the following paragraph:

3. Les fonds qui ne sont pas directement associés aux services juridiques fournis par eux.

37. The English version of By-Law 9 is further amended by adding the following section:

Time limit on holding money in trust account

8.1 A licensee shall not keep in a trust account money related to legal services being provided by the licensee beyond a minimally reasonable amount of time after the legal services have been performed.

38. The French version of By-Law 9 is further amended by adding the following section:

Délai pour détenir les fonds en fiducie

8.1 Le titulaire d'un permis ne garde pas dans un compte en fiducie les fonds associés aux services juridiques qu'il a fournis au-delà d'un délai minimal raisonnable après avoir rendu ses services.

BY-LAW 7.1

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OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

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PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

“electronic funds transfer” means the transfer of funds from one financial institution or financial entity to another initiated by the transmission, through any electronic, magnetic or optical device, telephone instrument or computer, of instructions for the transfer of funds, where the record of the transfer includes a reference number, the name of the financial institution or financial entity sending the funds, the name of the financial institution or financial entity receiving the funds, the date of the transfer of the funds, the amount of funds transferred, the currency of the funds transferred, the name of the holder of the account from which the funds transferred are drawn and the name of the holder of the account to which the funds transferred are deposited;

“financial entity” means a financial entity headquartered and operating in a country that is a member of the Financial Action Task Force on Money Laundering;

“financial institution” means,

- (a) a bank to which the *Bank Act (Canada)* applies a bank that is regulated by the *Bank Act (Canada)*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act (Canada)* in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union, credit union or caisse populaire that is regulated by an Act of a province or territory of Canada,
- (d) an association that is regulated by the *Cooperative Credit Associations Act (Canada)*,
- (e) a company to which the *Trust and Loan Companies Act (Canada)* applies, a company that is regulated by the *Trust and Loan Companies Act (Canada)*,
- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, a loan or trust corporation that is regulated by an Act of a province or territory of Canada,
 - (f.1) a financial services cooperative that is regulated by *An Act respecting financial services cooperatives (Quebec)* or *An Act respecting the Mouvement Desjardins (Quebec)* and that is not a caisse populaire,
 - (f.2) a central cooperative credit society within the meaning of section 2 of the *Cooperative Credit Associations Act (Canada)* or a credit union central or a federation of credit unions or caisses populaires that is regulated by an Act of a province, other than Quebec, or territory of Canada,
- (g) a ministry, department or agent of the government of Canada or of a province or territory of Canada if the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (h) a subsidiary of an entity mentioned in clauses (a) to (g) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them;

“lawyer” means an individual who is authorized to practise law in a province or territory of Canada outside Ontario;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

~~“proceeding” means a proceeding before an adjudicative body;~~

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,
- (b) a municipality incorporated by or under an Act of a province or territory of Canada, including a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality, any other incorporated municipal body and an agent of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in the *Municipal Act* and any similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of Canada or of a province or territory of Canada for a public purpose, or
- (f) a subsidiary of an entity mentioned in clauses (a) to (e) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“reporting issuer” means,

- (a) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory,
- (b) a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (c) a subsidiary of an entity mentioned in clause (a) or (b) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“securities dealer” means a person authorized under an Act of a province or territory of Canada to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, excluding any person who acts exclusively on behalf of such a person.

Application of Part

21. This Part applies only to matters in respect of which a licensee is retained to provide her or his professional services after this Part comes into force regardless of whether the client is a new or existing client.

Application of client identification and verification requirements

22. (1) Subject to subsections (2), (3) and (4), a licensee shall,
- (a) when the licensee is retained to provide her or his professional services to a client, comply with the client identification requirements set out in subsection 23 (1); and
 - (b) when the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds,
 - (i) comply with the client identification requirements set out in subsection ~~23~~ (2) subsections 23 (2) and (2.1), and
 - (ii) comply with the client verification requirements set out in subsection 23 (4).

Exemption re certain licensees

- (2) A licensee is not required to comply with the client identification and verification requirements set out in section 23 if,
- (a) the licensee is engaged in the activities described in subsection (1) on behalf of her or his employer;
 - (b) the licensee is engaged in the activities described in subsection (1) as agent for another licensee or a lawyer who has already complied with the client identification and verification requirements set out in section 23;
 - (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by another licensee or a lawyer who has already complied with the client identification and verification requirements set out in section 23; or
 - (d) the licensee is engaged in the activities described in subsection (1), other than the activities described in clause (1) (b), as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as a provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

Exemptions re certain funds

(3) A licensee is not required to comply with the client identification requirements set out in ~~subsection 23 (2)~~ subsections 23 (2) and (2.1) or the client verification requirements set out in subsection 23(4) in respect of funds,

- (a) paid to or received from a financial institution, public body or reporting issuer;
- (b) received from the trust account of another licensee or a lawyer;
- (c) received from a peace officer, law enforcement agency or other public official acting in an official capacity;
- ~~(d) paid or received pursuant to a court order;~~
- ~~(e) paid to pay a fine or penalty;~~
- ~~(f) paid or received as a settlement in a proceeding;~~
- ~~(g) paid or received for professional fees, disbursements, expenses or bail; or~~
- ~~(h) paid, received or transferred by electronic funds transfer.~~
- (d) paid to pay a fine, a penalty or bail;
- (e) paid or received for,
 - (i) fees billed or to be billed to a client for legal services provided or to be provided to the client by the licensee or another licensee who practises law or provides legal services through the licensee's firm,
 - (ii) disbursements, or
- (f) paid, received or transferred by electronic funds transfer.

Exemptions re certain clients

(4) A licensee is not required to comply with the client identification requirements set out in ~~subsection 23 (2)~~ subsection 23 (2) and (2.1) or the client verification requirements set out in subsection 23 (4) in respect of any of the following clients:

1. A financial institution.
2. A public body.
3. A reporting issuer.

Client identification

23. (1) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client if applicable.
7. If the client is an organization, the name, position and contact information for each individual who gives who is authorized to give instructions with respect to the matter for which the licensee is retained.
8. If the client is acting for or representing a third party, information about the third party as set out in paragraphs 1 to 7, as applicable.

Same

~~(2) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client or any third party that the client is acting for or representing is an organization, in addition to complying with the client identification requirements set out in subsection (1), the licensee shall make reasonable efforts to obtain the following information about the client and the third party:~~

- ~~1. The name and occupation or occupations of each director of the organization, other than an organization that is a securities dealer.~~
- ~~2. The name, address and occupation or occupations of each person who owns twenty five percent or more of the organization or of the shares of the organization.~~

Client identification, identification by others in licensee's firm

~~(2.1) A licensee complies with the identification requirements set out in subsections (1) and (2) if an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements.~~

~~Client identification, previous identification~~

~~(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee or another individual acting on behalf of the licensee under subsection (2.1) has previously complied with the identification requirements and has also previously complied with the verification requirements set out in subsection (4) in respect of the organization.~~

~~Client verification requirements~~

~~(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall take reasonable steps to verify the identity of the client and any third party that the client is acting for or representing using what the licensee reasonably considers to be reliable, independent source documents, data or information.~~

Additional client identification: activities mentioned in clause 22 (1) (b)

(2) When a licensee is engaged in the activities described in clause 22 (1) (b), in addition to complying with the client identification requirements set out in subsection (1), the licensee shall obtain from the client information about the source of the funds being received, paid or transferred.

Additional client identification when organization involved: activities mentioned in clause 22 (1) (b)

(2.1) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client or third party that the client is acting for or representing is an organization, in addition to complying with the client identification requirements set out in subsections (1) and (2), the licensee shall,

(a) obtain the name of each director of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain,

(i) the names and addresses of the persons who own, directly or indirectly, twenty-five percent or more of the organization or of the shares of the organization, if applicable,

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, if applicable, and

(iii) information establishing the ownership, control and structure of the organization.

Alternate requirement when unable to meet identification and other requirements re organization

(2.2) If a licensee is unable to obtain the information mentioned in subsection (2.1) or to confirm the accuracy of the information as required by subsection (12.2), the licensee shall,

- (a) take reasonable measures to identify the most senior managing officer of the organization;
- (b) determine whether the client's information in respect of their activities and the source of the funds and the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required under subsection (2.1) and record the results of the determination and the date on which it was made; and
- (c) assess whether there is a risk that the licensee may be assisting in or encouraging fraud or other illegal conduct and record the results of the assessment and the date on which it was made.

Client identification: identification by others in licensee's firm

(2.3) A licensee complies with the identification requirements set out in subsections (1) to (2.2) if an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements.

Client verification requirements

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall verify the identity of the client, including the individuals mentioned in paragraph (1) 7, and any third party that the client is acting for or representing using the documents, data or information mentioned in subsection (7).

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1), including an individual mentioned in ~~paragraph 7~~ paragraph (1) 7, immediately after first engaging in the activities described in clause 22 (1) (b).

~~Timing of verification, organizations~~

~~(6) — A licensee shall verify the identity of an organization mentioned in subsection (1) by not later than 60 days after first engaging in the activities described in clause 22 (1) (b).~~

Examples of independent source documents

~~(7) — The following are examples of independent source documents for the purposes of subsection (4):~~

- ~~1. — If the client or third party is an individual, an original government issued identification that is valid and has not expired, including a driver's licence, birth certificate, provincial or territorial health card (if such use of the card is not prohibited by the applicable provincial or territorial law), passport or similar record.~~
- ~~2. — If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation~~

~~from a government registry as to the existence, name and address of the organization, which includes the names of the organization's directors, if applicable, such as,~~

- ~~i. — a certificate of corporate status issued by a public body,~~
- ~~ii. — a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or~~
- ~~iii. — a copy of a similar record obtained from a public body that confirms the organization's existence.~~

~~3. — If the client or third party is an organization other than a corporation or society, such as a trust or partnership which is not registered in any government registry, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.~~

~~Client verification, non face to face~~

~~— (8) — When a licensee is engaged in the activities described in clause 22 (1) (b) and the licensee is not receiving instructions from an individual face to face, the licensee complies with the verification requirements set out in subsection (4) if the licensee obtains an attestation from a person described in subsection (9) that the person has seen the appropriate independent source documents.~~

~~Persons from whom attestations may be accepted~~

~~— (9) — For the purposes of section (8), a licensee may obtain an attestation from the following persons:~~

- ~~1. — If the client whose identity is being verified is present in Canada,~~
 - ~~i. — a person entitled to administer oaths and affirmations in Canada, or~~
 - ~~ii. — any of the following persons:~~

~~— A. — a dentist,~~

~~— B. — a physician,~~

~~— C. — a chiropractor,~~

~~— D. — a judge,~~

~~— E. — a magistrate or a justice of the peace,~~

_____ F. — a lawyer,

G. — a licensee (in Ontario)

H. — a notary (in Quebec),

I. — a notary public,

J. — an optometrist,

_____ K. — a pharmacist,

L. — an accountant,

M. — a professional engineer,

N. — a veterinarian,

O. — a police officer,

P. — a nurse,

Q. — a school principal.

2. — If the client whose identity is being verified is not present in Canada, a person acting on behalf of the licensee under clause (11) (b).

Attestation, form

_____ (10) — For the purposes of subsection (8), an attestation shall be endorsed on a legible photocopy of the document and shall include;

(a) — the name, occupation and address of the person providing the attestation;

(b) — the signature of the person providing the attestation; and

(c) — the type and number of the document seen by the person providing the attestation.

Client verification, use of agent, etc.

_____ (11) — A licensee complies with the verification requirements set out in subsection (4) if,

(a) — an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements; or

- ~~(b) — an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement specifying the steps that the individual will be taking on behalf of the licensee to comply with the verification requirements.~~

~~Client verification, previous verification~~

- ~~(12) — A licensee complies with the verification requirements set out in subsection (4),~~
- ~~(a) — in the case of an individual mentioned in subsection (1), if the licensee has previously complied with the verification requirements set out in subsection (4) in respect of the individual and recognizes the individual; and~~
- ~~(b) — in the case of an organization mentioned in subsection (1), the licensee or an individual acting on behalf of the licensee under subsection (11) has previously complied with the identification requirements set out in subsection (2) and the verification requirements set out in subsection (4) in respect of the organization.~~

Timing of verification: organizations

- (6) A licensee shall verify the identity of an organization mentioned in subsection (1) immediately and, in all cases, by not later than 30 days after first engaging in the activities described in clause 22 (1) (b).

Documents, data and information for verification

- (7) Subject to subsection (8), the following are the documents, data and information for the purposes of subsection (4):

1. If the client or third party is an individual,
 - i. a government issued photo identification document, excluding a document that is issued by a municipal government,
 - ii. information in the individual's credit file that is located in Canada and has been in existence for at least three years,
 - iii. any two of the following pieces of information, each from a different source that is not the individual, the licensee or an individual acting on behalf of the licensee pursuant to subsection (11),
 - A. information from a reliable source that contains the individual's name and address,
 - B. information from a reliable source that contains the individual's name and date of birth,
 - C. information that contains the individual's name and confirms that they have a deposit account, credit card or other loan amount with a financial institution.

2. If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, which includes the names of the organization's directors, if applicable such as,
- i. a certificate of corporate status issued by a public body,
 - ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - iii. a copy of a similar record obtained from a public body that confirms the organization's existence.
3. If the client or third party is an organization other than a corporation or society that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.

Requirements re documents, data and information used for verification

- (8) For the purposes of subsection (4), documents and records used must be authentic, valid and current and other information used must be valid and current.

Client verification: individual younger than 12 years

- (9) If a licensee is required to verify the identity of an individual who is under twelve years of age, the licensee shall verify the identity of a parent or guardian.

Client verification: individual 12 years or older but younger than 15 years

- (10) If a licensee is required to verify the identity of an individual who is at least twelve years of age but not more than 15 years of age, the licensee may do so by obtaining information from a reliable source that contains the name and address of a parent or guardian and confirming that the address of the parent or guardian matches the individual's address.

Client verification: use of agent, etc.

- (11) A licensee complies with the verification requirements set out in subsection (4) if,
- (a) an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements; or
 - (b) an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that,
 - (i) the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement for this purpose, and
 - (ii) the licensee obtains from the individual the information obtained by them under the agreement, satisfies themselves that the information is valid and current and satisfies themselves that the individual complied with subsections (4) to (10).

Client verification: previous verification

(12) A licensee complies with the verification requirements set out in subsection (4),

(a) if the licensee has previously complied with the verification requirements set out in subsection (4) and has no reason to believe the information or the accuracy of the information has changed; or

(b) an individual acting on behalf of the licensee under subsection (11) previously complied with the verification requirements set out in subsection (4) either acting in their own capacity at the time, whether or not they were required to comply with the verification requirements set out in subsection (4), or acting on behalf of another licensee at the time pursuant to an agreement under subsection (11).

Recording information

(12.1) The licensee shall record all information obtained for the purposes of subsections (1) to (2.2) and the date on which it was obtained.

Additional requirements in identification of organization

(12.2) If the licensee is identifying an organization, in addition to recording the information mentioned in subsection (12.1), the licensee shall,

(a) take reasonable measures to confirm the accuracy of the information obtained for the purposes of subsection (2.1); and

(b) record the measures taken to confirm the accuracy of the information obtained for the purposes of subsections (2.1) and the date on which the measures were taken.

Copies of documents to be obtained

(13) The licensee shall obtain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection (4), including a copy of every document used by an individual acting on behalf of the licensee under subsection (11).

Record retention

(14) The licensee shall retain a record of the information obtained for the purposes of subsections (1) and (2) and copies of all documents received for the purposes of subsection (4) for the longer of,

(a) the duration of the licensee and client relationship and for as long as is necessary for the purpose of providing service to the client; and

(b) a period of at least six years following completion of the work for which the licensee was retained.

Document retention: form

(15) For the purposes of subsection (14), documents may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

Monitoring

23.1. During a retainer in which the licensee engages in the activities described in 22 (1) (b), the licensee shall,

(a) periodically monitor the professional business relationship with the client for the purposes of,

(i) determining whether the client's information in respect of their activities and the source of funds and the client's instructions in respect of the transactions are consistent with the purpose of the retainer and the information obtained about the client and required under section 23, and

(ii) assessing whether there is a risk that the licensee may be assisting or encouraging fraud or other illegal conduct; and

(b) keep a record of the measures taken and the information obtained with respect to the licensee's activities as mentioned in subclause (a) (i) and the date on which the measures were taken and the information obtained.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client identification or verification requirements set out in ~~section 23~~ section 23 or 23.1, knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in fraud or other illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

Commencement

25. This Part comes into force on December 31, 2008.

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RÈGLEMENT ADMINISTRATIF N°7.1

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25 septembre 2013
25 juin 2015
23 février 2017
2 mars 2017 (changements de la rédaction)
25 janvier 2018

OBLIGATIONS ET RESPONSABILITÉS OPÉRATIONNELLES

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PARTIE III

IDENTIFICATION DES CLIENTS ET VÉRIFICATION

Définitions

20. Dans la présente partie,

« avocat » S'entend d'une personne qui est autorisée à exercer le droit dans un territoire ou une province du Canada autre que l'Ontario.

« courtier en valeurs mobilières » S'entend d'une personne autorisée en vertu d'une législation provinciale à se livrer au commerce des valeurs mobilières ou d'autres instruments financiers, ou à la prestation des services de gestion de portefeuille et de conseils en placement, à l'exclusion de toute personne qui agit seulement au nom d'une telle personne.

« émetteur assujetti » S'entend, selon le cas :

a) d'un émetteur assujetti au sens d'une loi d'une province ou d'un territoire du Canada à l'égard du droit des valeurs mobilières de la province ou du territoire,

b) d'une personne morale dont les actions sont négociées sur une bourse désignée en vertu de l'article 262 de la *Loi de l'impôt sur le revenu* (Canada) et qui exploite ses activités dans un pays membre du Groupe d'action financière sur le blanchiment des capitaux,

c) d'une filiale d'une entité visée à l'alinéa a) ou b) si les états financiers de la filiale sont consolidés avec ceux de l'entité.

« entité financière » Entité financière ayant son siège social et exploitant ses activités dans un pays membre du Groupe d'action financière sur le blanchiment des capitaux.

« établissement financier » S'entend,

a) d'une banque qui est régie par la *Loi sur les Banques* (Canada) ;

~~d'une banque exploitée conformément à la *Loi sur les Banques* (Canada) ;~~ b) d'une banque étrangère autorisée au sens de l'article 2 de la *Loi sur les banques* (Canada), à l'égard de ses activités au Canada ;

c) d'une société coopérative de crédit, d'une caisse d'épargne et de crédit, d'une *credit union* ou d'une caisse populaire règlementée sous le régime d'une loi d'une province ou d'un territoire du Canada ;

d) d'une association règlementée par la *Loi sur les associations coopératives de crédit* (Canada) ;

e) d'une société qui est régie par *Loi sur les sociétés de fiducie et de prêt* (Canada) ; ~~d'une société assujettie à la *Loi sur les sociétés de fiducie et de prêt* (Canada) ;~~

f) d'une société de prêt ou de fiducie qui est régie par une loi d'une province ou d'un territoire du Canada ;

(f.1) d'une coopérative de services financiers qui est régie par la *Loi sur les coopératives de services financiers* (Québec) ou la *Loi sur le Mouvement Desjardins* (Québec) et qui n'est pas une caisse populaire ;

(f.2) d'une coopérative de crédit centrale au sens de l'article 2 de la *Loi sur les associations coopératives de crédit* (Canada), d'une centrale de caisses d'épargne ou d'une fédération de caisses d'épargne ou de caisses populaires qui est régie par une loi d'une province, autre que le Québec, ou d'un territoire du Canada ; ~~d'une société de prêt ou de fiducie règlementée sous le régime d'une loi d'une province ou d'un territoire du Canada ;~~

g) d'un ministère, d'un service ou d'un mandataire du gouvernement du Canada, d'une province ou d'un territoire du Canada si le ministère, le service ou le mandataire en question accepte des sommes en dépôt lorsqu'il fournit des services financiers au public ;

h) d'une filiale d'une entité visée aux alinéas a) à g) si les états financiers de la filiale sont consolidés avec ceux de l'entité.

« fonds » S'entend des espèces, de la monnaie, des titres et des effets négociables et d'autres instruments financiers qui indiquent le titre de la personne et ses intérêts dans ceux-ci.

~~« instance » Instance dont est saisi un organisme juridictionnel.~~

« organisme » S'entend d'une personne morale, d'une société de personnes, d'un fonds, d'une société de fiducie, d'une coopérative ou d'une association non constituée en personne morale.

« organisme public » S'entend, selon le cas :

a) d'un ministère, d'un service ou d'un mandataire du gouvernement du Canada ou d'une province ou d'un territoire du Canada ;

b) d'une municipalité constituée sous le régime d'une loi d'une province ou d'un territoire du Canada, notamment une cité, une ville, un village, une municipalité de communauté urbaine ou régionale, un canton, un district, un comté, une municipalité rurale, tout autre organisme municipal constitué en personne morale et leurs mandataires ;

c) d'un conseil local d'une municipalité constituée en personne morale sous le régime d'une loi d'une province ou d'un territoire du Canada, notamment un conseil local au sens de la *Loi sur les municipalités* et tout autre organisme similaire constitué en personne morale en vertu d'une loi d'une autre province ou d'un territoire ;

d) d'un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national en application de la *Loi sur la taxe d'accise* (Canada) ou ses mandataires ;

e) d'une entité constituée en personne morale sous le régime d'une loi du Canada ou d'une province ou d'un territoire du Canada à des fins d'intérêt public ;

f) d'une filiale d'une entité visée aux alinéas a) à e) si les états financiers de la filiale sont consolidés avec ceux de l'entité.

« virement électronique » S'entend du virement de fonds entre établissements financiers ou entités financières par l'intermédiaire de la transmission, par des moyens électroniques, magnétiques ou optiques, par téléphone ou par ordinateur, d'instructions demandant le virement, lorsque la consignation du virement comprend un numéro de référence, la dénomination de l'établissement financier ou de l'entité financière qui vire les fonds, celle de l'établissement financier ou de l'entité financière qui les reçoit, la date du virement, le montant du virement, la monnaie dans laquelle se fait le virement, le nom du titulaire du compte d'où les fonds virés sont tirés et celui du titulaire du compte dans lequel ils sont déposés.

Application de la présente partie

21. La présente partie ne s'applique qu'aux affaires pour lesquelles les services professionnels d'un ou d'une titulaire de permis sont retenus, après son entrée en vigueur, qu'il s'agisse de nouveaux clients ou de clients actuels.

Application des exigences relatives à l'identification des clients et aux vérifications

22. (1) Sous réserve des paragraphes (2), (3) et (4), le titulaire de permis,

a) se conforme aux exigences d'identification des clients visées au paragraphe 23 (1) lorsque ses services professionnels sont retenus par un client,

b) lorsqu'il reçoit, débourse ou vire des fonds ou donne des directives à cet effet,

(i) se conforme aux exigences d'identification des clients visées aux paragraphes 23 (2) et (2.1) ;

(ii) se conforme aux exigences de vérification de l'identité des clients visées au paragraphe 23 (4).

Exemptions relatives à certains titulaires de permis

(2) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients et aux vérifications de l'article 23,

- a) s'ils prennent part aux activités visées au paragraphe (1) au nom de leur employeur ;
- b) s'ils prennent part aux activités précisées au paragraphe (1) en tant que mandataires de titulaires de permis qui se sont déjà conformés aux exigences relatives à l'identification des clients et aux vérifications visées à l'article 23 ;
- c) s'ils prennent part aux activités visées au paragraphe (1) dans le cadre de dossiers de clients qui leur sont confiés par d'autres titulaires de permis ou avocats qui se sont déjà conformés aux exigences relatives à l'identification des clients et aux vérifications visées à l'article 23 ;
- d) s'ils prennent part aux activités visées au paragraphe (1), sauf celles visées à l'alinéa (1) b), en qualité d'avocats de service dans le cadre de la *Loi de 1998 sur les services d'aide juridique*, en qualité d'avocats de service qui fournissent des services professionnels dans le cadre d'un programme d'avocats de service parrainé par un organisme sans but lucratif ou à titre de fournisseurs de services d'aide juridique en donnant des conseils sommaires dans le cadre de la *Loi de 1998 sur les services d'aide juridique*.

Exemptions relatives à certains fonds

(3) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients visées aux paragraphes 23 (2) et (2.1) ou aux exigences relatives à la vérification de l'identité des clients visées au paragraphe 23 (4) à l'égard des fonds qui sont, selon le cas :

- a) versés à ou reçus d'un établissement financier, d'un organisme public ou d'un émetteur assujéti ;
- b) reçus du compte en fiducie d'autres titulaires de permis ou avocats ;
- c) reçus d'un agent de la paix, d'un organisme chargé de l'application de la loi ou de tout autre agent public dans l'exercice officiel de ses fonctions ;
- d) versés pour payer une amende, une sanction ou une caution ; ~~versés ou reçus conformément à une ordonnance judiciaire ;~~
- e) payés ou reçus pour :
 - (i) les honoraires facturés ou devant être facturés à un client pour des services juridiques fournis ou devant être fournis au client par le titulaire de permis ou un autre titulaire de permis qui exerce le droit ou fournit des services juridiques par le biais d'un cabinet ;
 - (ii) les débours ;
- f) payés, reçus ou virés par voie électronique ~~versés pour payer une amende ou une sanction ;~~
- ~~f) versés ou reçus à titre de règlement d'une instance ;~~
- ~~g) versés ou reçus pour des honoraires professionnels, débours, dépenses ou cautions ;~~

Exemptions relatives à certains clients

(4) Les titulaires de permis ne sont pas tenus de se conformer aux exigences relatives à l'identification des clients visées aux paragraphes 23 (2) et (2.1) ou aux exigences relatives à la vérification de l'identité des clients visées au paragraphe 23 (4) à l'égard des clients suivants :

1. Les établissements financiers.

2. Les organismes publics.
3. Les émetteurs assujettis.

Identification des clients

23. (1) Lorsque les services professionnels d'un titulaire de permis sont retenus par un client, le titulaire de permis obtient les renseignements suivants au sujet de son client :

1. son nom complet ;
2. son adresse professionnelle et son numéro de téléphone au travail, le cas échéant ;
3. si le client est une personne physique, son adresse domiciliaire et son numéro de téléphone au domicile ;
4. si le client est un organisme qui n'est ni un établissement financier, ni un organisme public ni un émetteur assujetti, le numéro de constitution ou d'identité de l'organisme et le lieu d'émission de ce numéro, le cas échéant ;
5. si le client est une personne physique, sa profession ou son métier ;
6. si le client est un organisme qui n'est ni un établissement financier, un organisme public ou un émetteur assujetti, la nature générale de ses affaires ou de ses activités, le cas échéant ;
7. si le client est un organisme, le nom, le titre et les coordonnées de chaque particulier ~~qui~~ donne qui est autorisé à donner des directives quant aux affaires pour lesquelles les services du titulaire de permis sont retenus ;
8. si le client est le mandataire d'un tiers, les renseignements concernant le tiers visés aux paragraphes 1 à 7, s'il y a lieu.

Idem

Identification additionnelle des clients : activités mentionnées à l'alinéa 22 (1) b)

(2) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), il doit, en plus de se conformer aux exigences d'identification des clients du paragraphe (1), obtenir du client les renseignements sur la source des fonds reçus, payés ou virés.

Identification additionnelle des clients quand un organisme est visé : activités mentionnées à l'alinéa 22 (1) b)

(2.1) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), et que le client ou le tiers pour lequel le client agit ou qu'il représente est un organisme, en plus de se conformer aux exigences d'identification des clients des paragraphes (1) et (2), il doit :

- a) obtenir le nom de chaque administrateur de l'organisme, autre qu'un organisme qui est un courtier en valeurs mobilières ;
- b) prendre des mesures raisonnables pour obtenir :
 - (i) le nom et l'adresse de chaque personne qui détient, directement ou indirectement, 25 pour cent ou plus de l'organisme ou des actions de l'organisme, le cas échéant ;

(ii) le nom et l'adresse de chaque fiduciaire et des bénéficiaires et constituants connus, le cas échéant ;

(iii) les renseignements établissant la propriété, le contrôle et la structure de l'organisme.

Autre exigence en cas d'incapacité à satisfaire aux exigences d'identification et autres exigences concernant l'organisme

(2.2) Si un titulaire de permis n'est pas en mesure d'obtenir les renseignements mentionnés au paragraphe (2.1) ou de confirmer l'exactitude de ces renseignements tel que requis par le paragraphe (12.2), il doit :

a) prendre des mesures raisonnables pour identifier le dirigeant le plus élevé dans la hiérarchie de l'organisme ;

b) déterminer si les renseignements du client concernant ses activités et la source des fonds et ses instructions quant à la transaction sont conformes à l'objet du mandat et aux renseignements obtenus sur le client tel que requis par le paragraphe (2.1), et en consigner les résultats et la date ;

c) vérifier s'il y a un risque que le titulaire de permis contribue ou pourrait contribuer à la commission d'une fraude ou autre conduite illicite et en consigner les résultats et la date.

Identification des clients par d'autres personnes du cabinet du titulaire de permis

(2.3) Le titulaire de permis se conforme aux exigences d'identification des clients visées aux paragraphes (1) à (2.2) si s'y conforme un employé de son cabinet ou d'un ou d'une autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant son mandataire.

Exigences de vérification

(4) Le titulaire de permis qui se livre aux activités visées à l'alinéa 22 (1) b) vérifie l'identité du client, y compris les personnes mentionnées à l'alinéa (1) 7, et de tout tiers dont il est le mandataire, en se servant des documents, des données ou des renseignements mentionnés au paragraphe (7). (2) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b) et que le client lui-même ou tout tiers dont il est mandataire est un organisme, il doit, en plus de se conformer aux exigences d'identification des clients du paragraphe (1), prendre des mesures raisonnables pour obtenir les renseignements suivants au sujet de son client et du tiers:

1. le nom et les fonctions de chaque administrateur de l'organisme, autre qu'un organisme qui est un courtier en valeurs mobilières;

2. le nom, l'adresse et les fonctions de chaque personne qui détient 25 pour cent ou plus de l'organisme ou des actions de l'organisme.

Identification des clients par d'autres personnes du cabinet du titulaire de permis

(2.1) Les titulaires de permis se conforment aux exigences d'identification des clients visées aux paragraphes (1) et (2) si s'y conforme un employé de leur cabinet ou d'un ou d'une autre titulaire

de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant leur mandataire.

Identification des clients, identification préalable

(3) Les titulaires de permis se conforment aux exigences d'identification visées au paragraphe (2) si eux-mêmes et tout tiers qui est leur mandataire dans le cadre du paragraphe (2.1) se sont déjà conformés auxdites exigences d'identification des clients ainsi qu'aux exigences de vérification visées au paragraphe(4) à l'égard de l'organisme.

Exigences de vérification

(4) Lorsque les titulaires de permis se livrent aux activités décrites à l'alinéa 22 (1) b), ils prennent des mesures raisonnables pour confirmer l'identité du client et de tout tiers dont il est le mandataire, en se servant de ce qu'ils peuvent raisonnablement considérer comme étant des documents, des données ou des renseignements de source fiable et indépendante.

Moment de la vérification de l'identité des particuliers

(5) Les titulaires de permis doivent vérifier l'identité des personnes physiques visées au paragraphe (1), y compris les particuliers visés à l'alinéa (1) 7, dès qu'ils se livrent aux activités visées à l'alinéa 22 (1) b).

Moment de la vérification des organismes

(6) Le titulaire de permis doit vérifier l'identité de l'organisme mentionné au paragraphe (1) immédiatement et, dans tous les cas, au plus tard 30 jours dès le moment où il se livre aux activités visées à l'alinéa 22 (1) b). Les titulaires de permis doivent vérifier l'identité de l'organisme mentionné au paragraphe (1) dans un délai de 60 jours dès le moment où ils se livrent aux activités visées à l'alinéa 22 (1) b).

Documents, données et renseignements pour la vérification

(7) Sous réserve du paragraphe (8), les documents, données et renseignements visés au paragraphe (4) peuvent inclure :

1. Si le client ou le tiers est un particulier :

i. une pièce d'identité valide avec photo émise par le gouvernement, à l'exclusion d'un document qui est délivré par une administration municipale ;

ii. des renseignements sur le dossier de crédit de la personne, situé au Canada et existant depuis au moins trois ans ;

iii. l'un ou l'autre des documents suivants, chacun provenant d'une source différente qui n'est pas la personne, le titulaire de permis ou un mandataire du titulaire de permis au sens du paragraphe (11) :

A. renseignements d'une source fiable qui contiennent le nom et l'adresse de la personne ;

B. renseignements d'une source fiable qui contiennent le nom et la date de naissance de la personne ;

C. renseignements qui contiennent le nom de la personne et qui confirment qu'elle a un compte de banque, une carte de crédit ou un prêt d'un établissement financier.

2. Si le client ou le tiers est un organisme, tel qu'une personne morale ou une société formée ou enregistrée conformément à une disposition législative habilitante, une confirmation écrite provenant d'un registre du gouvernement quant à l'existence, au nom et à l'adresse de l'organisme, incluant le nom de ses administrateurs, s'il y a lieu, tel que :

i. un certificat de constitution délivré par un organisme public ;

ii. une copie, obtenue d'un organisme public, d'un document qu'il est tenu de déposer annuellement aux termes de la loi ;

iii. une copie, obtenue d'un organisme public, d'un document semblable qui confirme son existence.

3. Si le client ou le tiers est un organisme, autre qu'une personne morale ou une société, qui n'est pas enregistré dans un registre du gouvernement, tel qu'une société de fiducie ou une société de personnes, une copie des actes constitutifs de l'organisme, tels qu'une convention de fiducie ou de société, un acte d'association ou tout autre document semblable qui confirme son existence en tant qu'organisme.

Exigences concernant les documents, les données et les renseignements utilisés pour la vérification

(8) Pour l'application du paragraphe (4), les documents et les dossiers utilisés doivent être authentiques, valides et à jour et les autres renseignements utilisés doivent être valides et à jour.

Vérification de l'identité d'un client de moins de 12 ans

(9) Si le titulaire de permis doit vérifier l'identité d'une personne de moins de 12 ans, il doit vérifier l'identité d'un des parents ou du tuteur.

Vérification de l'identité d'un client âgé de 12 ans à 15 ans

(10) Si le titulaire de permis doit vérifier l'identité d'une personne âgée de 12 ans à 15 ans, il doit le faire en obtenant les renseignements d'une source fiable qui donnent le nom et l'adresse d'un des parents ou du tuteur, et confirmer que cette adresse correspond à l'adresse de la personne.

Vérification de l'identité d'un client : recours à des mandataires

(11) Le titulaire de permis se conforme aux exigences de vérification du paragraphe (4) si, selon le cas :

a) un employé de son cabinet ou d'un autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant leur mandataire, s'y conforme ;

b) un particulier qui n'est pas visé à l'alinéa a), mais qui est son mandataire, s'y conforme, à la condition :

(i) que lui-même et ce particulier signent, avant que ce dernier ne devienne son mandataire, une entente à cette fin ;

(ii) que le titulaire de permis obtienne du particulier les renseignements que ce dernier a obtenus en vertu de l'entente, qu'il soit convaincu que les renseignements sont valides et à jour et que le particulier se conforme aux paragraphes (4) à (10).

Vérifications antérieures

(12) Le titulaire de permis se conforme aux exigences de vérification du paragraphe (4) si, selon le cas :

a) il s'est déjà conformé aux exigences de vérification du paragraphe (4) et n'a pas de raison de croire que les renseignements ou leur exactitude ont changé ;

b) un particulier qui est son mandataire au sens du paragraphe (11) s'est déjà conformé aux exigences de vérification du paragraphe (4) soit à titre personnel à ce moment-là, qu'il ait été ou non tenu de se conformer aux exigences de vérification du paragraphe (4), ou au nom d'un autre titulaire de permis conformément à une entente visée par le paragraphe (11).

Consignation des renseignements

(12.1) Le titulaire de permis consigne tous les renseignements obtenus pour l'application des paragraphes (1) à (2.2) et la date de leur obtention.

Exigences additionnelles pour identifier des organismes

(12.2) Si le titulaire de permis identifie un organisme, après avoir consigné les renseignements conformément au paragraphe (12.1), il doit :

a) prendre des mesures raisonnables pour confirmer l'exactitude des renseignements obtenus pour l'application du paragraphe (2.1) ;

b) consigner les mesures prises pour confirmer l'exactitude des renseignements obtenus pour l'application du paragraphe (2.1) et la date à laquelle ces mesures ont été prises.**Exemples de documents de source indépendante**

(7) Aux fins du paragraphe (4), les documents de source indépendante peuvent inclure:

1. si le client ou le tiers est un particulier, une pièce d'identité valide et originale émise par le gouvernement, incluant un permis de conduire, un acte de naissance, une carte santé émise par une entité provinciale ou territoriale (si un tel usage de la carte n'est pas interdit par la loi provinciale ou territoriale applicable), un passeport ou autre document semblable ;

2. si le client ou le tiers est un organisme, tel qu'une personne morale ou une société formée ou enregistrée conformément à une disposition législative habilitante, une confirmation écrite provenant d'un registre du gouvernement quant à l'existence, au nom et à l'adresse de l'organisme, incluant le nom de ses administrateurs, s'il y a lieu, telle que:

i. un certificat de constitution émis par un organisme public,

ii. une copie, obtenue d'un organisme public, d'un document qu'il est tenu de déposer annuellement aux termes de la loi,

iii. une copie, obtenue d'un organisme public, d'un document semblable qui confirme son

existence.

3. si le client ou le tiers est un organisme, autre qu'une personne morale ou une société, qui n'est enregistré dans aucun registre du gouvernement, tel qu'une société de fiducie ou une société de personnes, une copie des actes constitutifs de l'organisme, tels qu'une convention de fiducie ou de société, un acte d'association ou tout autre document semblable qui confirme son existence en tant qu'organisme.

Vérification des clients lors de transactions qui ne sont pas en face à face

(8) Lorsqu'un titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b) et qu'il ne reçoit pas ses directives en face à face, le titulaire de permis se conforme aux exigences de vérification des clients visées au paragraphe (4) s'il obtient une attestation de l'une des personnes visées au paragraphe (9) indiquant qu'elle a pu confirmer l'identité du client à partir de documents d'une source indépendante.

Personnes qui peuvent confirmer l'identité d'un client

(9) Aux fins du paragraphe (8), les titulaires de permis peuvent obtenir une attestation de l'une ou l'autre des personnes suivantes:

1. si le client visé par la confirmation d'identité se trouve au Canada,

i. une personne autorisée à faire prêter serment au Canada ;
ii. une des personnes suivantes:

- A. un dentiste ;
- B. un médecin ;
- C. un chiropraticien ;
- D. un juge ;
- E. un juge de paix ;
- F. un avocat ;
- G. un titulaire de permis (en Ontario) ;
- H. un notaire (au Québec) ;
- I. un notaire public ;
- J. un optométriste ;
- K. un pharmacien ;
- L. un comptable ;
- M. un ingénieur ;
- N. un vétérinaire ;
- O. un agent ou une agente de police ;
- P. un infirmier ou une infirmière ;
- Q. un directeur ou une directrice d'école.

2. si le client visé par la confirmation d'identité se trouve à l'extérieur du Canada, les mandataires des titulaires de permis, conformément à l'alinéa (11) b).

Contenu de l'attestation

-(10) Aux fins du paragraphe (8), une attestation doit être produite sous forme de photocopie lisible du document et doit contenir les renseignements suivants:

- a) le nom, la profession et l'adresse de la personne fournissant l'attestation ;
- b) la signature de la personne fournissant l'attestation ;
- (c) le type et le numéro de référence du document vérifié par la personne fournissant l'attestation.

Vérification de l'identité des clients, recours à des mandataires

-(11) Les titulaires de permis se conforment aux exigences de vérification du paragraphe (4) si, selon le cas:

- a) s'y conforme un employé de leur cabinet ou d'un ou d'une autre titulaire de permis qui exerce le droit ou qui fournit des services juridiques par l'intermédiaire de ce cabinet, cet employé étant leur mandataire ;
- b) un particulier qui n'est pas visé à l'alinéa a), mais qui est leur mandataire, s'y conforme, à la condition qu'eux-mêmes et ce particulier signent, avant que ce dernier ne devienne leur mandataire, une entente dans laquelle sont précisées les mesures qu'il prendra en leur nom en vue de s'y conformer.

Vérifications antérieures

-(12) Les titulaires de permis se conforment aux exigences de vérification du paragraphe (4),

- a) dans le cas d'une personne physique visée au paragraphe(1), s'ils se sont déjà conformés aux exigences de vérification du paragraphe (4) relativement à la personne et se souviennent de son identité ;
- b) dans le cas d'un organisme visé au paragraphe (1), si eux-mêmes ou un particulier qui est leur mandataire dans le cadre du paragraphe (11) se sont déjà conformés aux exigences d'identification du paragraphe (2) ainsi qu'aux exigences de vérification du paragraphe (4) à l'égard de l'organisme.

Obtention de copies de documents

(13) Aux fins du paragraphe (4), les titulaires de permis obtiennent une copie de tous les documents utilisés afin de confirmer l'identité d'un particulier ou d'un organisme, y compris une copie de tous les documents utilisés par les mandataires des titulaires conformément au paragraphe (11).

Tenue et conservation de documents

(14) Les titulaires de permis conservent un registre des renseignements obtenus aux fins des paragraphes (1) et (2) ainsi que des copies de tous les documents reçus aux fins du paragraphe (4) pendant la période la plus longue de celles qui suivent :

a) la durée de la relation avec le client et aussi longtemps qu'il est nécessaire aux fins de la prestation de services au client ;

b) pendant au moins six ans à compter de la clôture des dossiers pour lesquels leurs services ont été retenus.

Format de conservation des documents

(15) Pour l'application du paragraphe (14), les documents peuvent être conservés dans un format lisible par machine ou électronique, si une copie papier peut en être facilement produite.

Surveillance

23.1. Au cours d'un mandat dans lequel le titulaire de permis se livre aux activités visées à l'alinéa 22 (1) b), le titulaire de permis doit :

a) surveiller régulièrement la relation professionnelle avec le client aux fins suivantes :

(i) déterminer si les renseignements fournis par le client relativement à ses activités et à la provenance des fonds ainsi que les instructions du client relativement aux transactions sont conformes à l'objet du mandat et aux renseignements obtenus sur le client et exigés en vertu de l'article 23 ;

(ii) évaluer s'il y a un risque que le titulaire de permis contribue ou pourrait contribuer à la commission d'une fraude ou de toute autre conduite illicite ;

b) conserver un dossier des mesures prises et des renseignements obtenus relativement aux activités du titulaire de permis visées au sous-alinéa a) (i) et la date à laquelle les mesures ont été prises et les renseignements obtenus.

Activité criminelle, obligation de se retirer d'un dossier au moment d'obtenir les renseignements

24. Si, en vérifiant l'identité des clients conformément aux articles 23 ou 23.1, les titulaires de permis savent ou devraient savoir qu'ils contribuent ou pourraient contribuer à la commission d'une fraude par un client ou à toute autre conduite illégale de sa part,

a) ils cessent immédiatement toute activité qui pourrait contribuer à la commission de la fraude ou à la conduite illégale ;

b) s'ils sont dans l'incapacité de se conformer à l'alinéa a), ils cessent de fournir des services professionnels au client.

Entrée en vigueur

25. La présente partie entre en vigueur le 31 décembre 2008.

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BY-LAW 9

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FINANCIAL TRANSACTIONS AND RECORDS

PART I

INTERPRETATION

Interpretation

1. (1) In this By-Law,

“arm’s length” has the same meaning given it in the *Income Tax Act* (Canada);

“cash” means current coin within the meaning of the *Currency Act* (Canada), notes intended for circulation in Canada issued by the Bank of Canada pursuant to the *Bank of Canada Act* and current coin or banks notes of countries other than Canada;

“charge” has the same meaning given it in the *Land Registration Reform Act*;

“client” means a person or group of persons from whom or on whose behalf a licensee receives money or other property;

“firm of licensees” means,

- (a) a partnership of licensees and all licensees employed by the partnership,
- (b) a professional corporation established for the purpose of practising law in Ontario and all licensees employed by the professional corporation,
- (c) a professional corporation established for the purpose of providing legal services

in Ontario and all licensees employed by the professional corporation, or

- (d) a professional corporation established for the purpose of practising law and providing legal services in Ontario and all licensees employed by the professional corporation;

“holiday” means,

- (a) any Saturday or Sunday;
- (b) New Year’s Day, and where New Year’s Day falls on a Saturday or Sunday, the following Monday;
- (c) Family Day
- (d) Good Friday;
- (e) Easter Monday;
- (f) Victoria Day;
- (g) Canada Day, and where Canada Day falls on a Saturday or Sunday, the following Monday;
- (h) Civic Holiday;
- (i) Labour Day;
- (j) Thanksgiving Day;
- (k) Remembrance Day, and where Remembrance Day falls on a Saturday or Sunday, the following Monday;
- (l) Christmas Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday, and where Christmas Day falls on a Friday, the following Monday;
- (m) Boxing Day; and
- (n) any special holiday proclaimed by the Governor General or the Lieutenant Governor;

“lender” means a person who is making a loan that is secured or to be secured by a charge, including a charge to be held in trust directly or indirectly through a related person or

corporation;

“licensee” includes a firm of licensees;

“money” includes cash, cheques, drafts, credit card sales slips, post office orders and express and bank money orders;

“related” has the same meaning given it in the *Income Tax Act* (Canada);

“Teranet” means Teranet Inc., a corporation incorporated under the *Business Corporations Act*, acting as agent for the Ministry of Consumer and Business Services.

Time for doing an act expires on a holiday

(2) Except where a contrary intention appears, if the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

When deemed in trust

(3) For the purposes of subsections 9 (1), (2) and (3) and section 14, cash, cheques negotiable by the licensee, cheques drawn by the licensee on the licensee’s trust account and credit card sales slips in the possession and control of the licensee shall be deemed from the time the licensee receives such possession and control to be money held in a trust account if the cash, cheques or credit card sales slips, as the case may be, are deposited in the trust account not later than the following banking day.

...

PART III

CASH TRANSACTIONS

Definition

3. In this Part,

“funds” means cash, currency, securities and negotiable instruments or other financial instruments that indicate the person’s title or right to or interest in them;

~~“public body” means,~~

- (a) ~~— a department or agent of Her Majesty in right of Canada or of a province;~~
- (b) ~~— an incorporated city, metropolitan authority, town, township, village, county, district, rural municipality or other incorporated municipal body or an agent of any of them; and~~
- (c) ~~— an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital under the *Excise Tax Act* (Canada) or agent of the organization.~~

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,
- (b) a municipality incorporated by or under an Act of a province or territory of Canada, including a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality, any other incorporated municipal body and an agent of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in the *Municipal Act* and any similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of Canada or of a province or territory of Canada for a public purpose, or
- (f) a subsidiary of an entity mentioned in clauses (a) to (e) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

Cash received

4. (1) A licensee shall not receive or accept from a person, in respect of any one client file, cash in an aggregate amount of more than 7,500 ~~or more~~ Canadian dollars.

Foreign currency

(2) For the purposes of this section, when a licensee receives or accepts from a person cash in a foreign currency the licensee shall be deemed to have received or accepted the cash converted into Canadian dollars at,

- (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the licensee receives or accepts the cash; or
- (b) if the day on which the licensee receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the licensee receives or accepts the cash.

Application

5. Section 4 applies when, in respect of a client file, a licensee engages in or gives instructions in respect of the following activities:

- 1. The licensee receives or pays funds.
- 2. The licensee purchases or sells securities, real properties or business assets or entities.
- 3. The licensee transfers funds by any means.

Exceptions

6. Despite section 5, section 4 does not apply when the licensee, in connection with the provision of legal services by the licensee,

- (a) receives cash from a public body, an authorized foreign bank within the meaning of section 2 of the *Bank Act* (Canada) in respect of its business in Canada or a bank to which the *Bank Act* (Canada) applies, a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act, an association that is regulated by the *Cooperative Credit Associations Act* (Canada), a financial services cooperative that is regulated by *An Act respecting financial services cooperatives* (Quebec) or *An Act respecting the Mouvement Desjardins* (Quebec) and that is not a caisse populaire, a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial, other than Quebec, or territorial Act, a company ~~to which~~ that is regulated by the *Trust and Loan Companies Act* (Canada) ~~applies~~, a trust company or loan company that is regulated by a provincial or territorial Act or a department or agent of Her Majesty in right of Canada or of a province or territory where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

- (b) receives cash from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity;
- ~~(c) receives cash pursuant to an order of a tribunal;~~
- (d) receives cash to pay a fine, ~~or a~~ penalty or bail; or
- (e) receives cash for fees, disbursements, or expenses, ~~or bail~~ provided that any refund out of such receipts is also made in cash.

PART IV

TRUST ACCOUNT

TRUST ACCOUNT TRANSACTIONS

Money received in trust for client

7. (1) Subject to section 8, every licensee who receives money in trust for a client shall immediately pay the money into an account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or registered trust corporation, to be kept in the name of the licensee, or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, and designated as a trust account.

Interpretation

(2) For the purposes of subsection (1), a licensee receives money in trust for a client if the licensee receives from a person,

- (a) money that belongs in whole or in part to a client;
- (b) money that is to be held on behalf of a client;
- (c) money that is to be held on a client's direction or order;
- (d) money that is advanced to the licensee on account of fees for services not yet rendered; or
- (e) money that is advanced to the licensee on account of disbursements not yet made.

Money to be paid into trust account

(3) In addition to the money required under subsection (1) to be paid into a trust account, a licensee shall pay the following money into a trust account:

1. Money that may by inadvertence have been drawn from a trust account in contravention of section 9.
2. Money paid to a licensee that belongs in part to a client and in part to the licensee where it is not practical to split the payment of the money.

Money to be paid into trust account: money received before licence issued

(3.1) If a licensee who holds a Class P1 licence receives from a person, prior to being issued the licence, money for services yet to be rendered to a client and the licensee does not perform the services for the client by May 2, 2010, the licensee shall on May 3, 2010 pay the money into a trust account.

Withdrawal of money from trust account

(4) A licensee who pays into a trust account money described in paragraph 2 of subsection (3) shall as soon as practical withdraw from the trust account the amount of the money that belongs to him or her.

One or more trust accounts

- (5) A licensee may keep one or more trust accounts.

Money not to be paid into trust account

8. (1) A licensee is not required to pay into a trust account money which he or she receives in trust for a client if,
- (a) the client requests the licensee in writing not to pay the money into a trust account;
 - (b) the licensee pays the money into an account to be kept in the name of the client, a person named by the client or an agent of the client; or
 - (c) the licensee pays the money immediately upon receiving it to the client or to a person on behalf of the client in accordance with ordinary business practices.

Same

- (2) A licensee shall not pay into a trust account the following money:
 1. Money that belongs entirely to the licensee or to another licensee of the firm of licensees of which the licensee is a partner, through which the licensee practises law or provides legal services or by which the licensee is employed, including an amount received as a general retainer for which the licensee is not required either to account or to provide services.
 2. Money that is received by the licensee as payment of fees for services for which a billing has been delivered, as payment of fees for services already performed for which a billing will be delivered immediately after the money is received or as reimbursement for disbursements made or expenses incurred by the licensee on behalf of a client.
 3. Money that is not directly related to legal services being provided by the licensee.

Record keeping requirements

(3) A licensee who, in accordance with subsection (1), does not pay into a trust account money which he or she receives in trust for a client shall include all handling of such money in the records required to be maintained under Part V.

Time limit on holding money in trust account

8.1 A licensee shall not keep in a trust account money related to legal services being provided by the licensee beyond a minimally reasonable amount of time after the legal services have been performed.

Withdrawal of money from trust account

9. (1) A licensee may withdraw from a trust account only the following money:
 1. Money properly required for payment to a client or to a person on behalf of a client.
 2. Money required to reimburse the licensee for money properly expended on behalf of a client or for expenses properly incurred on behalf of a client.
 3. Money properly required for or toward payment of fees for services performed by the licensee for which a billing has been delivered.
 4. Money that is directly transferred into another trust account and held on behalf of a client.

5. Money that under this Part should not have been paid into a trust account but was through inadvertence paid into a trust account.

Permission to withdraw other money

(2) A licensee may withdraw from a trust account money other than the money mentioned in subsection (1) if he or she has been authorized to do so by the Society.

Limit on amount withdrawn from trust account

(3) A licensee shall not at any time with respect to a client withdraw from a trust account under this section more money than is held on behalf of that client in that trust account at that time.

Manner in which certain money may be withdrawn from trust account

10. A licensee shall withdraw money from a trust account under paragraph 2 or 3 of subsection 9 (1) only,

- (a) by a cheque drawn in favour of the licensee;
- (b) by a transfer to a bank account that is kept in the name of the licensee and is not a trust account; or
- (c) by electronic transfer.

Withdrawal by cheque

11. A cheque drawn on a trust account shall not be,

- (a) made payable either to cash or to bearer; or
- (b) signed by a person who is not a licensee except in exceptional circumstances and except when the person has signing authority on the trust account on which a cheque will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all the trust accounts on which signing authority has been delegated to the person.

Withdrawal by electronic transfer

12. (1) Money withdrawn from a trust account by electronic transfer shall be withdrawn only in accordance with this section.

When money may be withdrawn

(2) Money shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one that does not permit an electronic transfer of funds unless,
 - i. one person, using a password or access code, enters into the system the data describing the details of the transfer, and
 - ii. another person, using another password or access code, enters into the system the data authorizing the financial institution to carry out the transfer.
2. The electronic transfer system used by the licensee must be one that will produce, not later than the close of the banking day immediately after the day on which the electronic transfer of funds is authorized, a confirmation from the financial institution confirming that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer were received.
3. The confirmation required by paragraph 2 must contain,
 - i. the number of the trust account from which money is drawn,
 - ii. the name, branch name and address of the financial institution where the account to which money is transferred is kept,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred,
 - v. the time and date that the data describing the details of the transfer and authorizing the financial institution to carry out the transfer are received by the financial institution, and
 - vi. the time and date that the confirmation from the financial institution is sent to the licensee.
4. Before any data describing the details of the transfer or authorizing the financial institution to carry out the transfer is entered into the electronic trust transfer system, an electronic trust transfer requisition must be signed by,
 - i. a licensee, or

- ii. in exceptional circumstances, a person who is not a licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic trust transfer system describing the details of the transfer and authorizing the financial institution to carry out the transfer must be as specified in the electronic trust transfer requisition.

Application of para. 1 of subs. (2) to sole practitioner

(3) Paragraph 1 of subsection (2) does not apply to a licensee who practises law or provides legal services without another licensee as a partner, if the licensee practises law or provides legal services through a professional corporation, without another licensee practising law or providing legal services through the professional corporation and without another licensee or person as an employee, if the licensee himself or herself enters into the electronic trust transfer system both the data describing the details of the transfer and the data authorizing the financial institution to carry out the transfer.

Same

(4) In exceptional circumstances, the data referred to in subsection (3) may be entered by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Additional requirements relating to confirmation

- (5) Not later than the close of the banking day immediately after the day on which the confirmation required by paragraph 2 of subsection (2) is sent to a licensee, the licensee shall,
- (a) produce a printed copy of the confirmation;
 - (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
 - (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and

- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(6) In exceptional circumstances, the tasks required by subsection (5) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition

(7) The electronic trust transfer requisition required under paragraph 4 of subsection (2) shall be in Form 9A.

Definitions

13. (1) In this section,

“closing funds” means the money necessary to complete or close a transaction in real estate;

“transaction in real estate” means,

- (a) a charge on land given for the purpose of securing the payment of a debt or the performance of an obligation, including a charge under the *Land Titles Act* and a mortgage, but excluding a rent charge, or
- (b) a conveyance of freehold or leasehold land, including a deed and a transfer under the *Land Titles Act*, but excluding a lease.

Withdrawal by electronic transfer: closing funds

(2) Despite section 12, closing funds may be withdrawn from a trust account by electronic transfer in accordance with this section.

When closing funds may be withdrawn

(3) Closing funds shall not be withdrawn from a trust account by electronic transfer unless the following conditions are met:

1. The electronic transfer system used by the licensee must be one to which access is restricted by the use of at least one password or access code.

2. The electronic transfer system used by the licensee must be one that will produce immediately after the electronic transfer of funds a confirmation of the transfer.
3. The confirmation required by paragraph 2 must contain,
 - i. the name of the person or entity in whose name the account from which money is drawn is kept,
 - ii. the number of the trust account from which money is drawn,
 - iii. the name of the person or entity in whose name the account to which money is transferred is kept,
 - iv. the number of the account to which money is transferred, and
 - v. the date the transfer is carried out.
4. Before the electronic transfer system used by the licensee is accessed to carry out an electronic transfer of funds, an electronic trust transfer requisition must be signed by,
 - i. the licensee, or
 - ii. in exceptional circumstances, a person who is not the licensee if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.
5. The data entered into the electronic transfer system describing the details of the electronic transfer of funds must be as specified in the electronic trust transfer requisition.

Additional requirements relating to confirmation

- (4) Not later than 5 p.m. on the day immediately after the day on which the electronic transfer of funds is carried out, the licensee shall,
 - (a) produce a printed copy of the confirmation required by paragraph 2 of subsection (3);

- (b) compare the printed copy of the confirmation and the signed electronic trust transfer requisition relating to the transfer to verify whether the money was drawn from the trust account as specified in the signed requisition;
- (c) indicate on the printed copy of the confirmation the name of the client, the subject matter of the file and any file number in respect of which money was drawn from the trust account; and
- (d) after complying with clauses (a) to (c), sign and date the printed copy of the confirmation.

Same

(5) In exceptional circumstances, the tasks required by subsection (4) may be performed by a person other than the licensee, if the person has signing authority on the trust account from which the money will be drawn and is bonded in an amount at least equal to the maximum balance on deposit during the immediately preceding fiscal year of the licensee in all trust accounts on which signing authority has been delegated to the person.

Electronic trust transfer requisition: closing funds

(6) The electronic trust transfer requisition required under paragraph 4 of subsection (3) shall be in Form 9C.

Requirement to maintain sufficient balance in trust account

14. Despite any other provision in this Part, a licensee shall at all times maintain sufficient balances on deposit in his or her trust accounts to meet all his or her obligations with respect to money held in trust for clients.

AUTOMATIC WITHDRAWALS FROM TRUST ACCOUNTS

Authorizing Teranet to withdraw money from trust account

15. (1) Subject to subsection (2), a licensee may authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Conditions

(2) A licensee shall not authorize Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction unless Teranet agrees to provide to the

licensee in accordance with subsection (3) a confirmation of the withdrawal that contains the information mentioned in subsection (4).

Time of receipt of confirmation

(3) The confirmation required under subsection (2) must be received by the licensee not later than 5 p.m. on the day immediately after the day on which the withdrawal is authorized by the licensee.

Contents of confirmation

- (4) The confirmation required under subsection (2) must contain,
- (a) the amount of money withdrawn from the trust account;
 - (b) the time and date that the authorization to withdraw money is received by Teranet; and
 - (c) the time and date that the confirmation from Teranet is sent to the licensee.

Written record of authorization

(5) A licensee who authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction shall record the authorization in writing.

Same

(6) The written record of the authorization required under subsection (5) shall be in Form 9B and shall be completed by the licensee before he or she authorizes Teranet to withdraw from a trust account described in subsection 16 (1) money required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction.

Additional requirements relating to confirmation

- (7) Not later than 5 p.m. on the day immediately after the day on which the confirmation required under subsection (2) is sent to a licensee, the licensee shall,
- (a) produce a paper copy of the confirmation, if the confirmation is sent to the licensee by electronic means;
 - (b) compare the paper copy of the confirmation and the written record of the authorization relating to the withdrawal to verify whether money was withdrawn from the trust account by Teranet as authorized by the licensee;

- (c) indicate on the paper copy of the confirmation the name of the client and any file number in respect of which money was withdrawn from the trust account, if the confirmation does not already contain such information; and
- (d) after complying with clauses (a) to (c), sign and date the paper copy of the confirmation.

Special trust account

- 16 (1) The trust account from which Teranet may be authorized by a licensee to withdraw money shall be,
- (a) an account at a chartered bank, provincial savings office, credit union or league to which the *Credit Unions and Caisses Populaires Act, 1994* applies or a registered trust corporation kept in the name of the licensee or in the name of the firm of licensees of which the licensee is a partner, through which the licensee practises law or by which the licensee is employed, and designated as a trust account; and
 - (b) an account into which a licensee shall pay only,
 - (i) money received in trust for a client for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction; and
 - (ii) money properly withdrawn from another trust account for the purposes of paying the document registration fees and the land transfer tax, if any, related to the client's real estate transaction.

One or more special trust accounts

- (2) A licensee may keep one or more trust accounts of the kind described in subsection (1).

Payment of money into special trust account

- (3) A licensee shall not pay into a trust account described in subsection (1) more money than is required to pay the document registration fees and the land transfer tax, if any, related to a client's real estate transaction, and if more money is, through inadvertence, paid into the trust account, the licensee shall transfer from the trust account described in subsection (1) into another trust account that is not a trust account described in subsection (1) the excess money.

Time limit on holding money in special trust account

(4) A licensee who pays money into a trust account described in subsection (1) shall not keep the money in that account for more than five days, and if the money is not properly withdrawn from that account by Teranet within five days after the day on which it is paid into that account, the licensee shall transfer the money from that account into another trust account that is not a trust account described in subsection (1).

Interpretation: counting days

(5) In subsection 16 (4), holidays shall not be counted in determining if money has been kept in a trust account described in subsection 16 (1) for more than five days.

Application of ss. 9, 11, 12 and 14

17. Sections 9, 11, 12 and 14 apply, with necessary modifications, to a trust account described in subsection 16 (1).

...

RÈGLEMENT ADMINISTRATIF N° 9

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24 janvier 2008

21 février 2008

20 mars 2009 (changements de la rédaction)

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3 mai 2011 (changements de la rédaction)

19 octobre 2015 (changements de la rédaction)

27 avril 2017

OPÉRATIONS FINANCIÈRES ET REGISTRES

PARTIE I

INTERPRÉTATION

Définitions

1. (1) Les définitions qui suivent s'appliquent au présent règlement administratif :

« cabinet » S'entend

a) d'une société de personnes constituée de titulaires de permis et de tous les titulaires de permis employés par la société,

b) d'une société professionnelle établie aux fins de l'exercice du droit en Ontario et de tous les titulaires de permis employés par la société professionnelle,

c) d'une société professionnelle établie aux fins de la prestation de services juridiques en Ontario et de tous les titulaires de permis employés par la société professionnelle,

d) d'une société professionnelle établie aux fins de l'exercice du droit et de la prestation de services juridiques en Ontario et de tous les titulaires de permis employés par la société professionnelle.

« charge » S'entend au sens que lui attribue la *Loi portant réforme de l'enregistrement immobilier*.

« client » Personne ou groupe de personnes de qui ou au nom de qui un ou une titulaire de permis reçoit des fonds ou d'autres biens.

« espèces » Monnaie courante conformément à la définition de la *Loi sur la monnaie courante*, billets de banque prévus pour la circulation au Canada émis par la Banque du Canada en application de la *Loi sur la Banque du Canada* et monnaie courante et billets des pays autres que le Canada.

« fonds » Espèces, chèques, traites, bordereaux de cartes de crédit, mandats poste, mandats exprès et mandats bancaires.

« jour férié » Chacun des jours suivants,

a) les samedis et les dimanches ;

b) le Jour de l'An, et si le jour de l'An tombe un samedi ou un dimanche, il est remis au lundi suivant ;

c) le Jour de la famille ;

d) le Vendredi Saint ;

e) le lundi de Pâques ;

f) la fête de Victoria ;

g) la fête du Canada, et si la fête du Canada tombe un samedi ou un dimanche, elle est remise au lundi suivant ;

h) le congé municipal ;

i) la fête du Travail ;

j) l'Action de grâces ;

k) le jour du Souvenir, et si le jour du Souvenir tombe un samedi ou un dimanche, il est remis au lundi suivant ;

l) le jour de Noël, et si Noël tombe un samedi ou un dimanche, il est remis au lundi ou mardi suivant, et s'il tombe un vendredi, le lundi suivant ;

m) le lendemain de Noël ;

n) les jours que le gouverneur général ou le lieutenant-gouverneur désigne par proclamation comme jours fériés.

« liée » S'entend au sens que lui attribue la *Loi de l'impôt sur le revenu (Canada)*.

« lien de dépendance » S'entend au sens de la *Loi de l'impôt sur le revenu (Canada)*.

« prêteur » ou « prêteuse » Personne qui consent un prêt garanti ou devant être garanti par une charge, et notamment par une charge détenue en fiducie, directement ou par l'intermédiaire d'une personne liée, physique ou morale.

« Teranet » S'entend de Teranet Inc., une personne morale constituée sous le régime de la *Loi sur les sociétés par actions*, agissant en qualité de mandataire du ministère des Services aux consommateurs et aux entreprises.

« titulaire de permis » S'entend d'un cabinet.

Délai expirant un jour férié

(2) Sauf indication contraire, lorsque le délai imparti pour accomplir un acte expire un jour férié, cet acte peut être accompli le premier jour qui suit et qui n'est pas un jour férié.

Lorsque réputé en fiducie

(3) Pour l'application des paragraphes 9 (1), (2) et (3) ainsi que de l'article 14, les espèces, les chèques négociables par les titulaires de permis, les chèques tirés par les titulaires de permis sur leurs comptes en fiducie et les bordereaux de cartes de crédit dont ils ont la possession et le contrôle sont réputés constituer des fonds détenus dans des comptes en fiducie dès leur prise de possession et de contrôle, s'ils sont déposés dans les comptes en fiducie au plus tard le jour ouvrable suivant.

PARTIE II

INTERDICTION D'EFFECTUER DES OPÉRATIONS TOUCHANT DES FONDS

Interdiction d'effectuer des opérations touchant des fonds

2. (1) Sous réserve des paragraphes (2) et (3), le titulaire failli au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), ne doit pas recevoir de fonds ni d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom ni effectuer d'autres opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes.

Exception

(2) Le titulaire de permis failli, au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), peut recevoir des fonds d'une personne ou d'un groupe de personnes ou en leur nom dans les cas suivants :

- a) il s'agit du paiement d'honoraires pour des services qu'il a fournis à cette personne ou à ce groupe de personnes ;
- b) il s'agit du remboursement de fonds légitimement dépensés ou de frais légitimement engagés au nom de cette personne ou de ce groupe.

Idem

(3) Le titulaire failli, au sens de la *Loi sur la faillite et l'insolvabilité* (Canada), peut adresser une demande écrite au Barreau pour solliciter l'autorisation de recevoir des fonds ou d'autres biens d'une personne ou d'un groupe de personnes ou en leur nom, autrement que dans les cas prévus au paragraphe (2) ou la permission d'effectuer des opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes, et le Barreau peut l'autoriser à le faire, sous réserve des conditions qu'il impose.

PARTIE II.1

INTERDICTION D'EFFECTUER DES OPÉRATIONS TOUCHANT DES FONDS – TITULAIRE DE PERMIS SUSPENDUS

Interprétation

2.1. Les définitions qui suivent s'appliquent à la présente partie.

« ordonnance de suspension » Ordonnance rendue en application de la Loi qui a pour effet de suspendre un permis autorisant à exercer le droit en Ontario en qualité d'avocat ou à fournir des services juridiques en Ontario, que la suspension commence lors du rendu de l'ordonnance ou par la suite.

« titulaire de permis suspendu » Titulaire de permis qui fait l'objet d'une ordonnance de suspension.

Interdiction d'effectuer des opérations touchant des fonds

2.2. (1) Sous réserve du paragraphe (2) et de l'article 2.3, les titulaires de permis suspendus ne doivent pas, pendant la durée de la suspension, recevoir de fonds ni d'autres biens d'une

personne ou d'un groupe de personnes ou en leur nom ni effectuer d'autres opérations touchant des fonds ou d'autres biens qui sont détenus en fiducie pour une personne ou un groupe de personnes.

Exception

(2) Les titulaires de permis suspendus peuvent recevoir des fonds d'une personne ou d'un groupe de personnes ou en leur nom dans les cas suivants :

a) il s'agit du paiement d'honoraires pour des services qu'ils ont fournis à cette personne ou à ce groupe de personnes ;

b) il s'agit du remboursement de fonds légitimement dépensés ou de frais légitimement engagés au nom de cette personne ou de ce groupe.

Compte en fiducie

2.3. (1) Les titulaires de permis suspendus font ce qui suit dans les 30 jours du début de la suspension :

a) ils retirent les fonds suivants de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et, au besoin, ils les versent à la personne pertinente :

(i) les fonds légitimement requis pour effectuer un paiement au nom d'une cliente ou d'un client,

(ii) les fonds requis pour se rembourser des fonds dépensés ou engagés légitimement au nom d'une cliente ou d'un client,

(iii) les fonds requis pour régler leurs honoraires relativement à des services rendus,

(iv) tous les fonds qui leur appartiennent ou qui appartiennent à une personne autre que la cliente ou le client ;

b) après avoir observé l'alinéa a), ils retirent tous les fonds appartenant à une cliente ou à un client de chaque compte en fiducie ouvert à leur nom ou au nom du cabinet où ils sont associés ou employés et ils les versent :

(i) soit à la cliente ou au client,

(ii) soit à un autre ou à une autre titulaire de permis à qui la cliente ou le client leur a donné la directive de verser les fonds,

(iii) soit à un ou une autre titulaire de permis qui a convenu avec eux d'accepter le versement lorsqu'ils ne peuvent pas observer le sous-alinéa (i) ou (ii) ;

c) après avoir observé les alinéas a) et b) :

(i) d'une part, ils ferment chaque compte en fiducie ouvert à leur nom,

(ii) d'autre part, ils annulent ou font annuler l'autorisation de signer qu'ils ont reçue à

l'égard de chaque compte en fiducie tenu au nom du cabinet où ils sont associés ou employés.

Cas où l'observation de l'alinéa (1) b) est facultative

(2) Les titulaires de permis suspendus ne sont pas tenus d'observer l'alinéa (1) b) si le dossier de la cliente ou du client est transféré, conformément à la partie IV du règlement administratif n°7.1, à un ou une autre titulaire de permis du cabinet où ils sont associés ou employés.

Application de la partie IV

(3) Le paragraphe 9 (3) et les articles 10, 11 et 12 s'appliquent au retrait de fonds d'un compte en fiducie effectué dans le cadre du présent article.

Reddition de comptes au Barreau quant à l'observation

(4) Les titulaires de permis suspendus rédigent et déposent auprès du Barreau, dans les 30 jours du début de la suspension, un rapport rédigé selon la formule fournie par celui-ci, qui confirme et qui expose en détail la façon dont ils observent le présent article.

Permission d'être dispensé

2.4. Les titulaires de permis suspendus peuvent demander par écrit au Barreau d'être dispensés d'une exigence prévue à la présente partie ou de la modifier. Le Barreau peut alors les dispenser de l'exigence ou la modifier, sous réserve des conditions qu'il impose.

PARTIE III

OPÉRATIONS EFFECTUÉES EN ESPÈCES

Définitions

3. Les définitions qui suivent s'appliquent à la présente partie.

« effets » Espèces, devises, valeurs mobilières et titres négociables ou autres instruments financiers qui font foi du titre ou ~~d'un intérêt~~ du droit à un intérêt ou à un intérêt à l'égard de ceux-ci.

~~« organisme public »;~~

a) Tout ministère ou mandataire de Sa Majesté du chef du Canada ou d'une province;

b) Une ville, ~~constituée en personne morale ou non~~, un village, une autorité métropolitaine, un canton, un district, un comté, une municipalité rurale ou un autre organisme municipal constitué en personne morale, ou un mandataire de ceux-ci;

e) Toute institution qui exploite un hôpital public et qui est désignée comme administration hospitalière par le ministre du Revenu national aux termes de la *Loi sur la taxe d'accise*, ou tout mandataire de celle-ci.

« organisme public » S'entend :

a) d'un ministère, service ou mandataire du gouvernement du Canada ou d'une province ou d'un territoire du Canada,

b) d'une municipalité constituée en personne morale en vertu d'une loi d'une province ou d'un territoire du Canada, y compris une ville, un village, une municipalité métropolitaine ou régionale, un canton, un district, un comté, une municipalité rurale, tout autre organisme municipal constitué en personne morale et un mandataire de l'un d'eux ;

c) du conseil local d'une municipalité constituée en personne morale par ou en vertu d'une loi d'une province ou d'un territoire du Canada, y compris tout conseil local tel que défini dans la Loi sur les municipalités et tout organisme similaire constitué en personne morale en vertu d'une loi d'une autre province ou d'un autre territoire ;

d) d'un organisme qui exploite un hôpital public et qui est désigné comme administration hospitalière par le ministre du Revenu national aux termes de la Loi sur la taxe d'accise, ou tout mandataire de celle-ci ;

e) d'un organisme constitué en société par ou en vertu d'une loi du Canada ou d'une province ou d'un territoire du Canada à des fins publiques ;

f) d'une filiale d'une entité mentionnée aux alinéas a) à e) lorsque les états financiers de la filiale sont consolidés avec les états financiers de l'entité.

Espèces reçues

4. (1) Un titulaire de permis ne peut recevoir ni accepter de quiconque, pour aucun dossier de client, des espèces pour un montant total plus de 7 500 \$ ou plus en argent canadien.

Devises étrangères

(2) Aux fins de cet article, si un titulaire de permis reçoit ou accepte de quiconque des espèces en devises étrangères, le titulaire de permis sera considéré comme ayant reçu ou accepté les espèces converties en dollars canadiens selon,

a) le taux de conversion officiel de la Banque du Canada publié dans ses taux à midi en vigueur à la date où l'opération est effectuée ;

b) si le jour où le titulaire de permis effectue l'opération est un jour férié, le taux de conversion de la Banque du Canada en vigueur à la date du jour ouvrable le plus récent avant le jour où l'opération est effectuée.

Application

5. L'article 4 s'applique aux titulaires de permis lorsque, par rapport à un dossier de client ou de cliente, un titulaire de permis reçoit ou donne des instructions sur les activités suivantes :

1. Le titulaire de permis reçoit ou paie des effets.

2. Le titulaire de permis achète ou vend des valeurs, des biens immobiliers ou un actif ou une entité commerciale.

3. Le titulaire de permis transfère des effets par quelque moyen que ce soit.

Exceptions

6. En dépit de l'article 5, l'article 4 ne s'applique pas au titulaire de permis lorsque celui-ci :

a) reçoit des espèces d'un organisme public, banque régie par la *Loi sur les banques*, banque étrangère autorisée — au sens de l'article 2 de la *Loi sur les banques* — dans le cadre de ses activités au Canada, coopérative de crédit, caisse d'épargne et de crédit ou caisse populaire régies par une loi provinciale, association régie par la *Loi sur les associations coopératives de crédit*, société régie par la *Loi sur les sociétés de fiducie et prêt*, société de fiducie ou de prêt régie par une loi provinciale ou ministre ou mandataire de Sa Majesté du chef du Canada ou d'une province lorsque le ministre ou mandataire accepte des dépôts dans le cadre des services financiers qu'il fournit au public ;

b) reçoit des espèces d'un agent de la paix, d'un organisme d'exécution de la loi ou de tout autre mandataire de la Couronne agissant à titre officiel ;

c) reçoit des espèces conformément à une ordonnance d'un tribunal administratif ;

d) reçoit des espèces pour payer une amende ou une sanction ;

e) reçoit des espèces pour honoraires, débours, dépenses ou cautionnement à condition que tout remboursement fait à partir de cet argent soit aussi fait en espèces. 6. Malgré l'article 5, l'article 4 ne s'applique pas au titulaire de permis lorsque celui-ci, à l'égard de sa prestation de services juridiques :

a) reçoit des espèces d'un organisme public, d'une banque étrangère autorisée — au sens de l'article 2 de la *Loi sur les banques* — dans le cadre de ses activités au Canada ou d'une banque régie par la *Loi sur les banques*, d'une coopérative de crédit, d'une caisse d'épargne et de crédit ou d'une caisse populaire régie par une loi provinciale ou territoriale, d'une association régie par la *Loi sur les associations coopératives de crédit* (Canada), d'une coopérative de services financiers régie par la *Loi sur les coopératives de services financiers* (Québec) ou par la *Loi sur le Mouvement Desjardins* (Québec) et qui n'est pas une caisse populaire, une centrale de caisses de crédit au sens de l'article 2 de la *Loi sur les associations coopératives de crédit* (Canada) ou une fédération de caisses d'épargne ou de caisses populaires qui est régie par une loi d'une province, autre que le Québec, ou d'un territoire, d'une société régie par la *Loi sur les sociétés de fiducie et de prêt* (Canada), d'une société de fiducie ou de crédit régie par une loi provinciale ou territoriale ou un ministre ou un mandataire de Sa Majesté du chef du Canada ou d'une province ou d'un territoire lorsque le ministre ou le mandataire accepte des obligations de dépôt dans le cadre de la prestation de services financiers au public ;

b) reçoit des espèces d'un agent de la paix, d'un organisme d'application de la loi ou d'un autre agent de la Couronne agissant à titre officiel ;

c) reçoit des espèces pour payer une amende, une pénalité ou une caution ;

d) reçoit des espèces pour des honoraires, des débours ou des dépenses, à condition que tout remboursement de ces produits soit également effectué en espèces.

PARTIE IV

COMPTES EN FIDUCIE

OPÉRATION DES COMPTES EN FIDUCIE

Fonds reçus en fiducie pour des clients

7. (1) Sous réserve de l'article 8, les titulaires de permis qui reçoivent des fonds en fiducie pour une cliente ou un client les déposent sans délai dans un compte en fiducie, à leur nom ou au nom du cabinet dont ils sont associés ou employés, ou par lequel ils exercent le droit ou fournissent des services juridiques, dans une banque à charte, une caisse d'épargne provinciale, une caisse ou caisse populaire ou une fédération à laquelle s'applique la *Loi de 1994 sur les caisses populaires et les Credit Unions* ou une société de fiducie inscrite.

Interprétation

(2) Pour l'application du paragraphe (1), les titulaires de permis reçoivent des fonds en fiducie pour une cliente ou un client s'ils reçoivent, de quiconque :

- a) des fonds appartenant en tout ou en partie à une cliente ou à un client ;
- b) des fonds qui doivent être détenus au nom d'une cliente ou d'un client ;
- c) des fonds qui doivent être détenus conformément à une directive ou à un ordre d'une cliente ou d'un client ;
- d) des fonds versés aux titulaires de permis à titre d'honoraires provisionnels pour des services non encore rendus ;
- e) des fonds versés aux titulaires de permis pour des débours non encore effectués.

Fonds déposés dans un compte en fiducie

(3) Outre les fonds qui doivent être déposés en application du paragraphe (1), les titulaires de permis déposent les fonds suivants dans un compte en fiducie :

- 1. Les fonds qui, par inadvertance, ont été retirés du compte en fiducie contrairement à l'article 9.
- 2. Les fonds versés aux titulaires de permis qui appartiennent en partie aux clientes ou clients et en partie aux titulaires de permis, lorsqu'en diviser le versement n'est pas pratique.

Fonds déposés dans un compte en fiducie : fonds reçus avant la délivrance du permis

(3.1) Si un titulaire de permis de catégorie P1 reçoit d'une personne, avant la délivrance de son permis, des fonds pour des services devant être rendus à un client et que le titulaire de permis ne rend pas les services au client avant le 2 mai 2010, le titulaire de permis doit, le 3 mai 2010, déposer les fonds dans un compte en fiducie.

Retrait de fonds d'un compte en fiducie

(4) Les titulaires de permis qui déposent dans un compte en fiducie des fonds décrits à la

disposition2 du paragraphe (3) retirent les fonds qui leur appartiennent du compte en fiducie dès que possible.

Nombre de comptes en fiducie

(5) Les titulaires de permis peuvent avoir plus d'un compte en fiducie.

Fonds n'ayant pas à être déposés dans un compte en fiducie

8. (1) Les titulaires de permis ne sont pas tenus de déposer dans un compte en fiducie les fonds reçus en fiducie pour une cliente ou un client dans l'un des cas suivants :

- a) La cliente ou le client leur demande, par écrit, de ne pas déposer les fonds dans un compte en fiducie ;
- b) les titulaires de permis déposent les fonds dans un compte ouvert au nom de la cliente ou du client ou d'une personne désignée par la cliente, le client ou son mandataire ;
- c) Les titulaires de permis remettent immédiatement les fonds à la cliente ou au client ou au nom de celui-ci conformément aux pratiques commerciales courantes.

Idem

(2) Les titulaires de permis ne doivent pas déposer dans un compte en fiducie :

- 1. Les fonds qui leur appartiennent entièrement ou qui appartiennent à d'autres titulaires de permis du cabinet dont ils sont associés ou employés, ou par lequel ils exercent le droit ou fournissent des services juridiques, notamment les honoraires provisionnels généraux dont les titulaires de permis ne sont pas tenus de rendre compte ou à l'égard desquels ils n'ont pas de service à rendre.
- 2. Les fonds qui sont reçus par les titulaires de permis en paiement d'honoraires pour lesquels une facture a été remise ou en paiement de services déjà rendus pour lesquels la facture sera remise immédiatement après la réception des fonds, ou en remboursement de débours ou de dépenses effectués par les titulaires de permis au nom d'une cliente ou d'un client.
- 3. Les fonds qui ne sont pas directement associés aux services juridiques fournis par eux.

Obligation de tenir des registres

(3) Les titulaires de permis qui, conformément au paragraphe (1), ne déposent pas dans un compte en fiducie des fonds reçus en fiducie pour une cliente ou un client inscrivent toutes les opérations relatives à ces fonds dans les registres prescrits par la partie V.

Délai pour détenir les fonds en fiducie

8.1 Le titulaire d'un permis ne garde pas dans un compte en fiducie les fonds associés aux services juridiques qu'il a fournis au-delà d'un délai minimal raisonnable après avoir rendu ses services.



Law Society
of Ontario

Barreau
de l'Ontario

Report of the Anti-Money Laundering Working Group

September 10, 2020

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Issue

This report provides an overview of the work of the Anti-Money Laundering (AML) Working Group, established by Convocation in November 2019.

Executive Summary

In October 2018, the Federation of Law Societies of Canada (“FLSC”) amended their Model Rules aimed at combatting money laundering and terrorist financing. Those amendments were initially brought before the Professional Regulation Committee when they were first proposed in October 2017, and were the subject of a Law Society call for comment in December 2017. Responses were received from the Federation of Ontario Law Societies, the Criminal Lawyers’ Association, the Ontario Bar Association, and Sorbara Schumacher McCann LLP. This feedback was incorporated into the Law Society’s submissions to the FLSC and resulted in concrete changes to the Model Rule amendments.

In November 2019, Convocation approved amendments in principle to the Law Society’s by-laws in order to implement the amended Model Rules. Convocation also established a working group of interested Benchers to work with the Chair and Vice-Chair of the Professional Regulation Committee on the proposed amendments.

In keeping with previous anti-money laundering provisions in our by-laws, the report to Convocation at that time recommended approval in principle of the Model Rule amendments as a means to

- Proactively assist licensees to avoid situations where they may inadvertently aid clients in illegal conduct.
- Protect licensees from possible prosecution for money-laundering, in light of a recent amendment to the *Criminal Code*, which effectively enables criminal prosecution of licensees for missing or ignoring warning signs of money laundering.
- Preserve solicitor-client privilege and self-regulation with respect to anti-money laundering rules and requirements.

Subsequent to Convocation’s approval of the amendments in principle, amendments were drafted to the Law Society’s By-Laws 7.1 and 9. Those proposed amendments were provided to the Working Group and formed the basis for discussions.

The Working Group held three meetings over five months to consider the amendments, but failed to reach consensus. Some Working Group members expressed concerns about

specific amendments, for instance the source of funds and ongoing monitoring requirements. As well, some members of the Working Group also expressed more fundamental opposition to implementing the amendments, including for the following reasons:

- That money laundering is not a serious problem in this country.
- To the extent it is a problem, shifting government priorities due to COVID-19 make it less pressing.
- Banks should be the primary focus of regulatory concern.

After completing three meetings the Chair elected to direct that a draft report be written and circulated to Working Group members for comment. This was done. Members responded with comments and further contributions, which are contained herein.

This Report is presented to the Professional Regulation Committee (PRC) and the Paralegal Standing Committee (PSC) for further consideration in accord with the November 2019 Resolution of Convocation. This Report does not represent a consensus of the Members of the Working Group but is reflective of their thoughts and observations, and is provided to PSC for information and discussion and to PRC to aid in deliberations.

Context

The Working Group was established pursuant to a decision made by Convocation on November 29, 2019, approving amendments in principle to the Law Society's by-laws in order to implement amendments that were made to the FLSC's Model Rules in October 2018. Convocation also decided to establish a working group of interested benchers to work with the PRC including its Chair and Vice-Chair on the proposed by-law amendments.

The Working Group held its first meeting on February 26, 2020. That meeting sought to identify key issues and concerns with the implementation of amendments to the FLSC Model Rules, and to discuss and review possible solutions to address any concerns.

The Working Group began a review of proposed amendments to By-Law 7.1, which incorporates the vast majority of the amendments required to implement the Model Rule changes. In addition, the Working Group was provided a number of background documents including the FLSC's Best Practices Guide for Law Societies in Canada and their Guidance for the Legal Profession. The Working Group was also provided an overview of the requirements for FINTRAC Reporting Entities, as an example of what

might be required of licensees if they were subject to the Federal Government's AML regime.

The Working Group continued its review during a meeting on May 5, 2020. The Working Group met again on June 1, 2020 and at that time, an "annotated" copy of the proposed amendments to By-Law 7.1 was provided for review, to provide the amendments in a more user friendly form. By the end of the June 1 meeting, the majority of the amendments had been reviewed and discussed.

The Working Group was scheduled to meet again on July 14, 2020. Prior to that meeting, however, the Chair of the Working Group determined:

- The material under consideration by the Group had been substantially canvassed;
- Consensus was not achievable; and
- Continuation of the Group's work would not aid nor advance the Professional Regulation Committee in its deliberations on the proposed amendments, which have already been adopted in principle by Convocation.

Therefore, the Chair decided to cancel all remaining Working Group meetings and instead draft a report to outline the Group's discussions, including the concerns expressed by members. This report was circulated and Working Group members were provided with an opportunity to suggest additions and amendments.

Analysis

A. Information provided to the Working Group in Support of the Amendments

Information and materials provided to the Working Group emphasized the following factors in support of the amendments.

- Money laundering and terrorist financing are serious international criminal problems that represent a threat to domestic and global safety and security, and compromise the integrity of the financial system.
 - Canada is not immune as indicated by media reports and the formation of the Commission of Inquiry into Money Laundering in British Columbia led by Commissioner Austin Cullen (Cullen Commission)¹.

¹ See Statement of Commissioner Austin Cullen on the Impact of COVID-19, April 16, 2020: "When this Commission was formed on May 15, 2019, money laundering was viewed as a serious threat to the social

- The Canadian government is under significant pressure from the international community to address money laundering in this country and has worked with international partners and made commitments to the international community to enact legislation aimed at helping detect and deter money laundering and the financing of terrorist activities.
- The exclusion of legal professionals from the federal regime remains an anomaly among our peer nations. Domestic and international observers regularly cite our exclusion, along with the protections that are afforded by solicitor-client privilege, as a major gap in Canada's AML enforcement efforts.
- In 2001, with the support of all Canadian law societies, the FLSC adopted the strategic priority of crafting rules aimed at combatting money laundering and terrorist financing. This strategic priority is important because
 - Self-regulation is maintained, and solicitor-client privilege and the independence of the bar are preserved;
 - Licensees are subject to rules drafted by their regulators that contemplate their application to the practise of law and the provision of legal services; and
 - Unlike similar professions, such as accountants or notaries in British Columbia, licensees remain outside of the federal regime, which imposes requirements involving comprehensive and costly compliance measures.
- Most other Canadian law societies have now implemented the 2018 Model Rule amendments.² This Law Society doing so would 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.
- These proposed amendments add more structure and context to existing long-standing requirements, in particular the requirements that licensees:
 - Not knowingly assist in or encourage fraud, crime, or illegal conduct.
 - Not do or omit to do anything that a licensee ought to know assists in, encourages or facilitates any dishonesty, fraud, crime or illegal conduct by a client or any other persons.

and economic well-being of British Columbians. Since that time, the Commission has undertaken significant steps towards fulfilling its mandate of casting light on the problem of money laundering in British Columbia and of examining the various ways in which it has been either combatted or enabled. . . . Dealing with the issue of money laundering — which the people of British Columbia have told us is important — continues to be a priority.”(See <https://cullencommission.ca/comm-statements/>)

² The Model Rules have been implemented in British Columbia, Alberta, the Northwest Territories, the Yukon, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, and Newfoundland. Implementation remains under consideration in Prince Edward Island and Nunavut, and is before the Office de Professions in Quebec.

- Make reasonable efforts to ascertain the purpose and objectives of a retainer and to obtain information about the client to fulfil that obligation.
- Be on guard against becoming the tool or dupe of an unscrupulous client or persons associated with such a client or any other person.³
- The FLSC, including with representatives from this Law Society, has joined with the federal government in a working group “to address the inherent risks of money laundering and other illicit activity that may arise in the practice of law”.⁴ Part of the Federation’s negotiation strategy with the Federal Government has been that the rules applicable to lawyers track the federal requirements and apply similar, if not more stringent requirements wherever practical. If the largest regulator in the country fails to adopt the amendments to the Rules, which are based on recent updates to the Federal regime, this negotiation strategy is in jeopardy, thereby increasing the likelihood that the Federal Government will seek to bring licensees under the Federal regime.
- In 2019, the Federal Government amended the *Criminal Code* to introduce an alternative requirement of recklessness to the offence of laundering the 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.⁵
 - As criminal courts across the country begin to interpret this new provision, they will look to standards in place in most provinces. In order to avoid being reckless, licensees in Ontario may have to comply with the Model Rule requirements, regardless of whether they are in place in this province. A failure to implement the Rules, and to provide corresponding resource and guidance materials will leave licensees in this province vulnerable to criminal prosecution.

³ See Rules 3.2-7 – 3.2-7.3 and commentary of the *Rules of Professional Conduct*, and Subrules 3.02(4) and (5) of the *Paralegal Rules of Conduct*.

⁴ 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>.

⁵ 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)



B. Concerns Expressed by Members of the Working Group

The Model Rule amendments were detailed in the report to PRC of September 2019, as well as the Report to Convocation of November 29, 2019.⁶

Members of the Working Group expressed specific and general concerns about the proposed amendments.

General Concerns

Some members of the Working Group opposed most if not all of the proposed amendments on the basis that they are too onerous and not necessary. In most instances, these general concerns were expressed as opposition to implementing the amendments to the Model Rules, which Convocation had approved in principle. In particular, the following general concerns were expressed.

- Money laundering is not a problem in this country, or if it is, it is not one that governments will care about anymore due to shifting priorities from COVID-19.
- The Provincial Government is interested in cutting red tape, and the Model Rules are simply red tape that should be cut.
- Lawyers are not the weak link in the enforcement chain. Banks are where the problem exists. Law Societies should push back against this perception in particular against the banks.
- Rather than implementing the Model Rule amendments, the Law Society should be lobbying other Canadian law societies to repeal the rules that they have implemented in their jurisdictions.
- These proposed rules create obligations that are outside of the scope of what small or medium size firms do, and they are onerous and overly burdensome.

Specific Concerns

In addition to the general opposition to the proposed amendments expressed by some Working Group members, others had specific concerns, which are detailed below.

Concern

⁶ The Report to Convocation is available on the LSO website at <https://lawsocietyontario.azureedge.net/media/iso/media/about/convocation/2019/convocation-november-2019-professionalregulation-committeereport.pdf>

The proposed amendments do not include a clear definition of “money laundering”.

Alternative Considerations

Laundering the proceeds of crime is an offence under subsection 462.31(1) of the *Criminal Code*.⁷ The Model Rule amendments do not seek to replicate the offence and therefore do not require a definition of money laundering.

The Rules and accompanying FLSC Guidance materials detail responsibilities and red flags for licensees to ensure that they do not aid in or facilitate money laundering, terrorist financing, or other illegal conduct. The Model Rules detail specific duties and requirements for licensees, such as client identification and verification, and certain prohibitions, such as with respect to the receipt of cash, which aim to reduce or eliminate the ability of others to use licensees to willingly or unwittingly participate in illegal conduct. Avoiding participation in money laundering and other illegal activity requires that licensees know their clients, including their identity, their financial dealings in relation to the retainer, and any risks arising from the licensee’s professional business relationship with their client.

Concern

- The requirement to obtain and record the names of corporate directors, and to take reasonable measures to confirm the accuracy of the information obtained.

It was noted that this information is often provided by the client in the form of a director’s register, or found on the respective government database. If the information is provided by the client, verification can only be obtained by checking the government database, for which there is a fee. If the government is

⁷ **462.31 (1)** Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

- **(a)** the commission in Canada of a designated offence; or
- **(b)** an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence

in possession of this information, licensees should not be required to pay a fee to access it.

Alternative Considerations

This requirement imposes a diligence obligation on lawyers to attempt to verify the truth of representations made by clients about the entity for which the licensee is acting. It also reflects a level of awareness to the threat of money laundering that is inconsistent with an allegation of recklessness and could protect licensees from criminal prosecution.

Verification requirements are only triggered where the retainer involves the receipt, payment, or transfer of funds.

Corporate entities are regularly used by money launderers as a means to move funds without scrutiny. This requirement can be considered as an aspect of existing obligations for licensees to know their clients and the subject matter and objectives of their retainers.

Attempting to obtain this information, and verify its accuracy on a reasonableness standard is prudent and provides context for existing requirements when representing corporate entities.

It is not particularly unusual to incur costs for accessing government or public information in respect of a client transaction. These costs are usually paid by clients as a disbursement.

Concern

- The requirement to identify and record the source of a client's funds for a transaction.

It was suggested that this requirement does not accomplish anything, that criminals will not disclose that the funds are from illegal means and, therefore, it creates an unnecessary regulatory burden.

In addition, it was suggested that this requirement is based on a false premise and that licensees are not the weak link in the enforcement chain. Rather, the solution to money laundering is with financial institutions that should be required to conduct sufficient diligence with respect to the source of funds and verify that the funds are valid and the property of the client who provided them.

Alternative Considerations

This proposed rule does create an obligation for licensees to inquire about the expected source and origins of the client's funds for a transaction. It also provides context to the existing obligation to ensure that licensees are not engaging in or assisting in illegal activities and therefore can proactively assist licensees in avoiding situations where they may inadvertently assist in illegal conduct.

It is not expected that this will impose onerous new obligations on licensees. The obligation is simply that licensees must make sufficient inquiries where the proposed transaction seems inconsistent with the client's apparent means or the circumstances of the transaction. In the context of most retainers, it is not expected that licensee will be required to do anything beyond what is required by existing diligence requirements.

Licensees who are not alert to the source of their clients' funds may be vulnerable to allegations that they have failed to turn their minds to known risks and red flags, and have been reckless with respect to money laundering. While there may be a larger role for financial institutions in assessing the source of client funds, licensees who do not conduct their own due diligence could be vulnerable to criminal prosecution.

Concern

- The requirement to engage in periodic monitoring of the professional business relationship with the client.

It was suggested that it is not the role of licensees to monitor a client's business operations and it is not within a licensee's ability to do so. Especially if there is no retainer nor access to client records enabling the licensee to do so. Rather, this requirement makes little sense and fails to understand a solicitor's role in most transactions. It cannot be complied with in many instances and is unlikely to have any impact. Business clients guard their proprietary information, processes, and plans, and it is not practical for the licensee to request or the client to share this information.

Alternative Considerations

The FLSC guidance materials describe this requirement as including a periodic check-in with a client where there is an established long-term professional relationship for the provision of legal services, or which is triggered if a client provides new facts about their activities or the source of funds, or if there is unexpected client behaviour. The requirement is applicable where a licensee

engages in or gives instructions in respect of the receiving, paying, or transferring of funds and only during the course of the retainer.

Licensees are required to monitor their business relationship with the client only to the extent necessary to look for red flags or inconsistencies that may reveal illegal or fraudulent activity. Licensees are not required to monitor the client's business, review the inner workings of organizational clients, or request proprietary information beyond what is required to competently provide the services for which the licensee has been retained.

This requirement may also be considered as providing context to the existing obligation under Rule 3.2-7 of the *Rules of Professional Conduct* or Subrule 3.02(4) of the *Paralegal Rules of Conduct*, which both provide in part that a licensee shall not knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct and in commentary to the lawyer rule advises to be alert and vigilant and obtain information from the client as required.

This requirement also provides much needed guidance for licensees with respect to the extent of their obligation to ensure that they are not reckless and are alert to red flags with respect to money laundering. A licensee who is not reckless must understand the client's transaction, the identity of their client, and the operative elements of the transaction. Periodic monitoring seeks to ensure that licensees continue to look for red flags throughout the course of a transaction.

Concern

- The requirement to obtain information about the ownership, control, and structure of an organization that is a client, where the retainer involves the receipt, payment, or transfer of funds.

It was suggested that the only place to receive this information is from the client itself, which presumably would only be as reliable as the person providing information on behalf of the organization.

Alternative Considerations

The proposed amendment requires that licensees make reasonable efforts to obtain information establishing the ownership, control, and structure of a client that is an organization, where the retainer involves receiving, paying, or

transferring of funds. Where that information cannot be obtained, the amendments direct licensees to:

- Take reasonable measures to identify the most senior managing officer of the organization;
- Determine whether the client's information in respect of their activities and the source of funds and the client's instructions in respect of the transaction are consistent with the purpose of the retainer, and the information the licensee has obtained about directors of the corporation, and record the results of that determination; and
- Assess whether there is a risk that the licensee may be assisting in or encouraging fraud or other illegal conduct and record the results of that assessment

This requirement is not inconsistent with existing obligations. In fact, the Commentary to Rule 3.2-7 of the *Rules of Professional Conduct* states:

To obtain information about the client and about the subject matter and objectives of the retainer, the lawyer may, for example, need to verify who are the legal or beneficial owners of property and business entities, verify who has the control of the business entity, and clarify the nature and purpose of a complex or unusual transaction where the purpose is not clear. The lawyer should make a record of the results of these inquiries. It is especially important to obtain this information where a lawyer has suspicions or doubts about whether he or she might be assisting a client or other person in dishonesty, fraud, crime or illegal conduct.

Ultimately, as a “gatekeeper” function, this proposed amendment requires licensees to ask for information that may reveal red flags that might otherwise remain hidden. While other professions are subject to the federal regime, our licensees are not. Licensees offer clients the benefits of confidentiality and privilege, which provides an economic advantage over other business advisors, such as accountants. As part of the trade-off for having this privileged position, licensees must bear the responsibility of exercising a gatekeeping function, including by making inquiries of clients to ensure that they are not assisting in illegal activities. Licensees who fail to make these inquiries are exposing themselves to risks, including the risk of becoming involved in criminal activity and facing criminal prosecution.

Concern

- The requirement to identify all trustees and all known beneficiaries and settlors of a trust and to confirm the accuracy of the information obtained.

It was suggested this requirement, in particular with respect to beneficiaries of trusts, may be difficult to comply with. This may especially be the case where the trust is large or the beneficiaries are unnamed individuals, for instance with respect to an Indigenous land claim.

Alternative Considerations

The proposed amendment requires that licensees make reasonable efforts to identify known beneficiaries and settlors of a trust in order to determine who effectively owns and controls the organization.

As noted in the FLSC guidance materials, the concealment of the beneficial ownership information, including with respect to a trust, is a technique used in money laundering and terrorist activity financing schemes. Collecting and confirming beneficial ownership information is part of knowing the client and ensuring that the licensee is not engaged in or facilitating illegal activities.

In certain instances it may not be possible to obtain this information. In such cases, reasonable efforts would include obtaining general information about the trust and its purpose. Ultimately, however, if the licensee cannot obtain the required information, the Model Rules require that the licensee take reasonable measures to identify the most senior managing officer of the organization (in the case of a trust, the trustee or person authorized to administer or execute on that trust), and assess the client's activities in the context of any risks that the transaction may be part of fraudulent or illegal activity.

Concern

- Financial institutions as lenders have shirked their responsibilities to verify the identity of borrowers and have shifted this responsibility to licensees.

It was suggested that lenders have minimized their risks, in part by attempting to move diligence requirements to licensees.

Alternative Considerations

It is fair for the Law Society to point out where other institutions and stakeholders have failed to exercise adequate diligence or where system improvements may enhance our national response to this significant criminal issue. However, the Law Society must still ensure that our licensees are subject

to appropriate rules and requirements and provide sufficient guidance and direction to attempt to ensure that they do not aid in, or act recklessly with respect to illegal client conduct.

Concern

- Financial institutions as bankers should bear more responsibility with respect to funds.

It was noted that virtually all of the funds received by licensees originate from licensed Canadian financial institutions. Licensees should be entitled to assume that these financial institutions have vetted their account holders and the source of their funds. There should be no reason for licensees to have any obligations to make further inquiries, including with respect to the source of those funds.

Alternative Considerations

Canada's response to money laundering and terrorist financing involves a collective, national effort, involving thousands of Canadian businesses, provincial and federal regulators, 13 federal departments and agencies, police, law enforcement, and national security agencies.⁸ Licensees are a key part of this national response and have remained independent of the Federal regime, in part due to Law Societies regulating comprehensively in this area. While it may be prudent for the Law Society to look for ways to collaborate with financial institutions and to share the verification burden, duplication of certain diligence requirements is prudent. Red flags may be spotted by licensees that are not evident to banks, which may not see all aspects of a deal. In addition, regardless of the information available to financial institutions, licensees must remain vigilant and must exercise appropriate diligence to ensure that they are not reckless with respect to money laundering. The Model Rules amendments provide structure and context to existing obligations and the level of diligence expected by licensees.

Concern

- Director/Shareholder/Beneficiary Verification

The following points were suggested:

⁸ See *Speaking Notes for Nada Semaan, Director and Chief Executive Officer, Financial Transactions and Reports Analysis Centre of Canada at the 2019 Casino Forum*. December 10, 2019.

- Licensees should be able to rely on information contained in government records to satisfy the requirement to verify directors of corporate clients
- Licensees should be permitted to rely on information provided by clients that are organizations to satisfy the requirement to identify beneficial owners

Alternative Considerations

As noted in the FLSC's guidance materials, the requirement to obtain the names of directors of corporate clients can be obtained from a provincial or federal database.⁹ The FLSC's guidance, and additional materials from the Law Society will be made available to licensees prior to any amendments coming into force.

In the Law Society's response to the FLSC's initial proposed amendments, significant concerns were raised about the requirement to identify and verify beneficial owners of organizations and trusts. We advised that this would be difficult, if not impossible to comply with in the absence of an effective corporate ownership registry. In response, the FLSC Working Group recommended against making it an absolute requirement for legal professionals to identify beneficial owners of organizations that are clients and instead recommended that licensees be required to make reasonable efforts to obtain that information. Where a licensee is not able to obtain this information, the Model Rules provide alternative measures, which are detailed above with respect to the requirement to obtain information about the ownership, structure and control of an organization that is a client.¹⁰

C. Next Steps

This report will be provided to the Professional Regulation Committee and the Paralegal Standing Committee for information and discussion.

⁹ See the Federation's *Guidance for the Legal Profession* pg. 15.

¹⁰ An additional concern was also expressed about Politically Exposed Persons (PEPs) and the fact that some lenders in real estate transactions have begun to mandate that licensees explain the applicable requirements as a means of shifting risk. As PEPs were not an issue before the Working Group this concern has not been addressed in this report, however the Law Society may wish to address this issue with lenders as part of increased co-operation moving forward.

BY-LAW 7.1

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June 25, 2015
February 23, 2017
March 2, 2017 (editorial changes)
January 25, 2018

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

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PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

“electronic funds transfer” means the transfer of funds from one financial institution or financial entity to another initiated by the transmission, through any electronic, magnetic or optical device, telephone instrument or computer, of instructions for the transfer of funds, where the record of the transfer includes a reference number, the name of the financial institution or financial entity sending the funds, the name of the financial institution or financial entity receiving the funds, the date of the transfer of the funds, the amount of funds transferred, the currency of the funds transferred, the name of the holder of the account from which the funds transferred are drawn and the name of the holder of the account to which the funds transferred are deposited;

“financial entity” means a financial entity headquartered and operating in a country that is a member of the Financial Action Task Force on Money Laundering;

“financial institution” means,

- (a) ~~a bank to which the *Bank Act (Canada)* applies~~ A bank that is regulated by the *Bank Act (Canada)*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act (Canada)* in respect of its business in Canada,
- (c) a cooperative credit society, savings and credit union, credit union or caisse populaire that is regulated by an Act of a province or territory of Canada,
- (d) an association that is regulated by the *Cooperative Credit Associations Act (Canada)*,

CHANGE – definition of “financial institution” to mirror the Federation Model Rules, which follow the definition used in the federal regulation

- (e) ~~a company to which the *Trust and Loan Companies Act* (Canada) applies,~~
a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (f) ~~a loan or trust corporation regulated by an Act of a province or territory of Canada,~~ a loan or trust corporation that is regulated by an Act of a province or territory of Canada,
- (f.1) a financial services cooperative that is regulated by *An Act respecting financial services cooperatives* (Quebec) or *An Act respecting the Mouvement Desjardins* (Quebec) and that is not a *caisse populaire*,
- (f.2) a central cooperative credit society within the meaning of section 2 of the *Cooperative Credit Associations Act* (Canada) or a credit union central or a federation of credit unions or *caisses populaires* that is regulated by an Act of a province, other than Quebec, or territory of Canada,
- (g) a ministry, department or agent of the government of Canada, or a province or territory of Canada if the ministry, department or agent accepts deposit liabilities in the course of providing financial services to the public, or
- (h) a subsidiary of an entity mentioned in clauses (a) to (g) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“funds” means cash, currency, securities, negotiable instruments and other financial instruments that indicate a person’s title or interest in them;

“lawyer” means an individual who is authorized to practise law in a province or territory of Canada outside Ontario;

“organization” means a body corporate, partnership, fund, trust, co-operative or an unincorporated association;

~~“proceeding” means a proceeding before an adjudicative body;~~

“public body” means,

- (a) a ministry, department or agent of the government of Canada or of a province or territory of Canada,
- (b) a municipality incorporated by or under an Act of a province or territory of Canada, including a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality, any other incorporated municipal body and an agent of any of them,
- (c) a local board of a municipality incorporated by or under an Act of a province or territory of Canada, including any local board as defined in the *Municipal Act* and any similar body incorporated under the law of another province or territory,
- (d) an organization that operates a public hospital and that is designated by the Minister of National Revenue as a hospital authority under the *Excise Tax Act* (Canada) or an agent of the organization,
- (e) a body incorporated by or under an Act of Canada or of a province or territory of Canada for a public purpose, or

CHANGE – Definition removed to mirror Federation Model Rules – definition of “proceeding” no longer required – amendment to section 22(3) removes the only reference to “proceeding”

- (f) a subsidiary of an entity mentioned in clauses (a) to (e) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“reporting issuer” means,

- (a) a reporting issuer within the meaning of an Act of a province or territory of Canada in respect of the securities law of the province or territory,
- (b) a corporation whose shares are traded on a stock exchange designated under section 262 of the *Income Tax Act* (Canada) and that operates in a country that is a member of the Financial Action Task Force on Money Laundering, or
- (c) a subsidiary of an entity mentioned in clause (a) or (b) where the financial statements of the subsidiary are consolidated with the financial statements of the entity;

“securities dealer” means a person authorized under an Act of a province or territory of Canada to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services excluding any person who acts exclusively on behalf of such a person.

Application of Part

21. This Part applies only to matters in respect of which a licensee is retained to provide her or his professional services after this Part comes into force regardless of whether the client is a new or existing client.

CHANGE – Definition of “securities dealer” to mirror Federation Model Rules, which follow the definition in the federal regulations

Application of client identification and verification requirements

22. (1) Subject to subsections (2), (3) and (4), a licensee shall,
- (a) when the licensee is retained to provide her or his professional services to a client, comply with the client identification requirements set out in subsection 23 (1); and
 - (b) when the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds,
 - (i) comply with the client identification requirements set out in subsection ~~23 (2)~~ subsections 23 (2) and (2.1), and
 - (ii) comply with the client verification requirements set out in subsection 23 (4).

Exemption re certain licensees

- (2) A licensee is not required to comply with the client identification and verification requirements set out in section 23 if,
- (a) the licensee is engaged in the activities described in subsection (1) on behalf of her or his employer;
 - (b) the licensee is engaged in the activities described in subsection (1) as agent for another licensee or a lawyer who has already complied with the client identification and verification requirements set out in section 23;
 - (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by

CURRENT REQUIREMENT – Where a licensee is retained to provide professional services, they must **identify** the client

CURRENT REQUIREMENT – Where that retainer includes receiving, paying or transfer of funds, the licensee must **verify the identity** of the client

NOTE – section 23(2.1) is renumbered, however, it is NOT a new requirement except for: there is a change to a mandatory requirement to identify directors of clients that are organizations and to make reasonable efforts to identify trustees, known beneficiaries, settlors of trusts, and information establishing the ownership, control and structure of the client that is an organization

CURRENT REQUIREMENT – Licensees in these circumstances are NOT required to comply with client identification and verification requirements; 2 (a) through (d) lists the exemptions

another licensee or a lawyer who has already complied with the client identification and verification requirements set out in section 23; or

- (d) the licensee is engaged in the activities described in subsection (1), other than the activities described in clause (1) (b), as a duty counsel under the *Legal Aid Services Act, 1998*, as a duty counsel providing professional services through a duty counsel program operated by a not-for-profit organization or as a provider of legal aid services through the provision of summary advice under the *Legal Aid Services Act, 1998*.

Exemptions re certain funds

(3) A licensee is not required to comply with the client identification requirements set out in ~~subsection 23 (2)~~ subsections 23 (2) and (2.1) or the client verification requirements set out in subsection 23(4) in respect of funds,

- (a) paid to or received from a financial institution, public body or reporting issuer;
- (b) received from the trust account of another licensee or a lawyer;
- (c) received from a peace officer, law enforcement agency or other public official acting in an official capacity;
- ~~(d) paid or received pursuant to a court order;~~
- ~~(e) paid to pay a fine or penalty;~~

NOTE – This section lists the types of funds and fund transactions where a licensee DOES NOT have to comply with:

- the source of funds requirement - s 23(2);
- additional identification requirements of directors and owners where the client is an organization/trust - s 23(2.1); or
- the client verification requirements – s 23(4)

3 (a) through (f) lists the exempted funds and fund transactions

~~(f) — paid or received as a settlement in a proceeding;~~

~~(g) — paid or received for professional fees, disbursements, expenses or bail; or~~

~~(h) — paid, received or transferred by electronic funds transfer.~~

(d) paid to pay a fine, a penalty or bail;

(e) paid or received for,

(i) fees billed or to be billed to a client for legal services provided or to be provided to the client by the licensee or another licensee who practises law or provides legal services through the licensee's firm,

(ii) disbursements, or

(f) paid, received or transferred by electronic funds transfer.

Exemptions re certain clients

(4) A licensee is not required to comply with the client identification requirements set out in ~~subsection 23 (2)~~ subsection 23 (2) and (2.1) or the client verification requirements set out in subsection 23 (4) in respect of any of the following clients:

1. A financial institution.
2. A public body.
3. A reporting issuer.

CHANGE – to mirror the Federation Model Rules, two exemptions are removed given their potential risk as money laundering channels: i) funds paid or received pursuant to a court order; and ii) paid or received as a settlement in a proceeding.

CHANGE – effective definition of fees added for clarity

CURRENT REQUIREMENT – Licensees acting for these clients are NOT required to comply with client verification requirements; (4) 1 through 3 list the exempt clients/entities

Client identification

23. (1) When a licensee is retained to provide her or his professional services to a client, the licensee shall obtain the following information about the client:

1. The client's full name.
2. The client's business address and business telephone number, if applicable.
3. If the client is an individual, the client's home address and home telephone number.
4. If the client is an organization, other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable.
5. If the client is an individual, the client's occupation or occupations.
6. If the client is an organization, other than a financial institution, public body or reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client if applicable.
7. If the client is an organization, the name, position and contact information for each individual ~~who gives who is~~ authorized to give instructions with respect to the matter for which the licensee is retained.

CURRENT REQUIREMENT – Requirements to identify clients – applicable to retainers for professional services by a licensee

8. If the client is acting for or representing a third party, information about the third party as set out in paragraphs 1 to 7, as applicable.

Additional client identification: activities mentioned in clause 22 (1) (b)

(2) When a licensee is engaged in the activities described in clause 22 (1) (b), in addition to complying with the client identification requirements set out in subsection (1), the licensee shall obtain from the client information about the source of the funds being received, paid or transferred.

Additional client identification when organization involved: activities mentioned in clause 22 (1) (b)

(2.1) When a licensee is engaged in the activities described in clause 22 (1) (b) and the client or third party that the client is acting for or representing is an organization, in addition to complying with the client identification requirements set out in subsections (1) and (2), the licensee shall,

(a) obtain the name of each director of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain,

(i) the names and addresses of the persons who own, directly or indirectly, twenty-five percent or more of the organization or of the shares of the organization, if applicable,

(ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, if applicable, and

(iii) information establishing the ownership, control and structure of the organization.

NEW REQUIREMENT – to mirror the Federation Model Rules, a requirement to obtain information about Source of Funds – ONLY APPLICABLE where the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds

CHANGE – to mirror the Federation Model Rules, changes to existing requirements for identification where the client is an organization and ONLY APPLICABLE where the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds.

-2.1((a) changes the requirement from “reasonable efforts” to “shall”;

-2.1(b) remains as a “reasonable efforts” requirement but now includes information on trusts and ownership/control of the organization

Alternate requirement when unable to meet identification and other requirements re organization

(2.2) If a licensee is unable to obtain the information mentioned in subsection (2.1) or to confirm the accuracy of the information as required by subsection (12.2), the licensee shall,

(a) take reasonable measures to identify the most senior managing officer of the organization;

(b) determine whether the client's information in respect of their activities and the source of the funds and the client's instructions in respect of the transaction are consistent with the purpose of the retainer and the information obtained about the client as required under subsection (2.1) and record the results of the determination and the date on which it was made; and

(c) assess whether there is a risk that the licensee may be assisting in or encouraging fraud or other illegal conduct and record the results of the assessment and the date on which it was made.

Client identification: identification by others in licensee's firm

(2.3) A licensee complies with the identification requirements set out in subsections (1) to (2.2) if an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements.

Client verification requirements

(4) When a licensee is engaged in the activities described in clause 22 (1) (b), the licensee shall verify the identity of the client, including the individuals mentioned in paragraph (1) 7, and any third party that the client is acting for or representing using the documents, date or information mentioned in subsection (7).

NEW REQUIREMENT – to mirror Federation Model Rules, alternative requirements ONLY APPLICABLE where the licensee cannot obtain the name of each director and/or where through reasonable efforts cannot obtain the name and address of beneficial owners, or trustees, known beneficiaries, settlors of trusts, or information establishing the ownership, control and structure of the client that is an organization

CHANGE – to mirror Federation Model Rules, licensees must verify identity of clients and persons authorized to give instructions on behalf of a client that is an organization, ONLY APPLICABLE where the licensee engages in or gives instructions in respect of the receiving, paying or transferring of funds

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1), including an individual mentioned in ~~paragraph 7~~ paragraph (1) 7, immediately after first engaging in the activities described in clause 22 (1) (b).

Timing of verification: organizations

(6) A licensee shall verify the identity of an organization mentioned in subsection (1) immediately and, in all cases, by not later than 30 days after first engaging in the activities described in clause 22 (1) (b).

Documents, data and information for verification

(7) Subject to subsection (8), the following are the documents, data and information for the purposes of subsection (4):

1. If the client or third party is an individual,
 - i. a government issued photo identification document, excluding a document that is issued by a municipal government,
 - ii. information in the individual's credit file that is located in Canada and has been in existence for at least three years,
 - iii. any two of the following pieces of information, each from a different source that is not the individual, the licensee or an individual acting on behalf of the licensee pursuant to subsection (11),

CHANGE – To mirror Federation Model Rules, time by which licensee must verify the identity of a client that is an organization is now 30 days

CHANGE/MODIFICATION – to mirror Federation Model Rules, documents, data and information that the licensee can use for verification:

- i) Government Photo Identification - modified;
- ii) Credit File Method - new; and
- iii) Dual Process Method - new

- A. information from a reliable source that contains the individual's name and address,
- B. information from a reliable source that contains the individual's name and date of birth,
- C. information that contains the individual's name and confirms that they have a deposit account, credit card or other loan amount with a financial institution.

2. If the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, which includes the names of the organization's directors, if applicable such as,

- i. a certificate of corporate status issued by a public body,
- ii. a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
- iii. a copy of a similar record obtained from a public body that confirms the organization's existence.

3. If the client or third party is an organization other than a corporation or society that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association or any other similar record that confirms its existence as an organization.

CURRENT REQUIREMENT – No change to documents that can be used to verify clients that are organizations

Requirements re documents, data and information used for verification

(8) For the purposes of subsection (4), documents and records used must be authentic, valid and current and other information used must be valid and current.

Client verification: individual younger than 12 years

(9) If a licensee is required to verify the identity of an individual who is under twelve years of age, the licensee shall verify the identity of a parent or guardian.

Client verification: individual 12 years or older but younger than 15 years

(10) If a licensee is required to verify the identity of an individual who is at least twelve years of age but not more than 15 years of age, the licensee may do so by obtaining information from a reliable source that contains the name and address of a parent or guardian and confirming that the address of the parent or guardian matches the individual's address.

Client verification: use of agent, etc.

(11) A licensee complies with the verification requirements set out in subsection (4) if,

- (a) an employee of the licensee's firm or another licensee who practises law or provides legal services through the licensee's firm, acting on behalf of the licensee, complies with the requirements; or
- (b) an individual who is not an individual mentioned in clause (a), acting on behalf of the licensee, complies with the requirements, provided that,

NEW REQUIREMENT – to mirror Federation Model Rules, documents, data and information must be authentic, valid and current

NEW REQUIREMENT – to mirror Federation Model Rules, verifying clients under 12 years

NEW REQUIREMENT – to mirror Federation Model Rules, verifying clients 12 years or older but younger than 15 years

REQUIREMENT REMOVED – to mirror Federation Model Rules, licensee no longer required to obtain an attestation in licensee-client non-face-to-face situations – licensee may either use an agent, or one of the verification methods that do not require that the individual be face-to-face with the licensee

- (i) the licensee and the individual, prior to the individual acting on behalf of the licensee, enter into a written agreement for this purpose, and
- (ii) the licensee obtains from the individual the information obtained by them under the agreement, satisfies themselves that the information is valid and current and satisfies themselves that the individual complied with subsections (4) to (10).

Client verification: previous verification

(12) A licensee complies with the verification requirements set out in subsection (4),

- (a) if the licensee has previously complied with the verification requirements set out in subsection (4) and has no reason to believe the information or the accuracy of the information has changed; or
- (b) an individual acting on behalf of the licensee under subsection (11) previously complied with the verification requirements set out in subsection (4) either acting in their own capacity at the time, whether or not they were required to comply with the verification requirements set out in subsection (4), or acting on behalf of another licensee at the time pursuant to an agreement under subsection (11).

Recording information

(12.1) The licensee shall record all information obtained for the purposes of subsections (1) to (2.2) and the date on which it was obtained.

NEW REQUIREMENT – to mirror Federation Model Rules, licensee must obtain the information used by the agent to verify identity, and must satisfy themselves that agent complied with the requirements

CHANGE – to mirror Federation Model Rules, previous verification is valid if the licensee has no reason to believe anything has changed

CHANGE – to mirror Federation Model Rules, licensee can rely on a previous verification by an individual acting on their own behalf, or on behalf of another licensee, including an agent acting under an agreement

NEW REQUIREMENT – to mirror Federation Model Rules, licensee must record the information obtained to verify identity and the date on which it was obtained

Additional requirements in identification of organization

(12.2) If the licensee is identifying an organization, in addition to recording the information mentioned in subsection (12.1), the licensee shall,

- (a) take reasonable measures to confirm the accuracy of the information obtained for the purposes of subsection (2.1);
and
- (b) record the measures taken to confirm the accuracy of the information obtained for the purposes of subsections (2.1) and the date on which the measures were taken.

Copies of documents to be obtained

(13) The licensee shall obtain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection (4), including a copy of every document used by an individual acting on behalf of the licensee under subsection (11).

Record retention

- (14) The licensee shall retain a record of the information obtained for the purposes of subsections (1) and (2) and copies of all documents received for the purposes of subsection (4) for the longer of,
- (a) the duration of the licensee and client relationship and for as long as is necessary for the purpose of providing service to the client; and
 - (b) a period of at least six years following completion of the work for which the licensee was retained.

NEW REQUIREMENT – to mirror Federation Model Rules, licensee must take reasonable efforts to confirm the accuracy of the information they have obtained about directors (their names) of client that is an organization (e.g. from a government database or a corporate search), and the information they have made reasonable efforts to obtain (names and addresses of beneficial owners, trustees and known beneficiaries and settlors of trusts, and information about ownership, control and structure of the organization)

Document retention: form

(15) For the purposes of subsection (14), documents may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

Monitoring

23.1. During a retainer in which the licensee engages in the activities described in 22 (1) (b), the licensee shall,

(a) periodically monitor the professional business relationship with the client for the purposes of,

(i) determining whether the client's information in respect of their activities and the source of funds and the client's instructions in respect of the transactions are consistent with the purpose of the retainer and the information obtained about the client and required under section 23, and

(ii) assessing whether there is a risk that the licensee may be assisting or encouraging fraud or other illegal conduct; and

(b) keep a record of the measures taken and the information obtained with respect to the licensee's activities as mentioned in subclause (a) (i) and the date on which the measures were taken and the information obtained.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client identification or verification requirements set out in ~~section 23~~ section 23 or 23.1, knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the licensee shall,

NEW REQUIREMENT – to mirror Federation Model Rules, documents that licensee used to verify identity can be kept electronically

NEW REQUIREMENT – to mirror Federation Model Rules, periodic monitoring the licensee's professional relationship (legal services) with the client as a risk management measure in the course of fulfilling the identification and verification requirements

CURRENT REQUIREMENT – Underlying objective of these requirements – where the licensee knows or ought to know that they will be assisting in illegal conduct they either stop the activities that would assist in the illegal activity and, if that is not possible, withdraw from representation

- (a) immediately cease to and not further engage in any activities that would assist the client in fraud or other illegal conduct; and
- (b) if the licensee is unable to comply with clause (a), withdraw from the provision of the licensee's professional services to the client.

Commencement

25. This Part comes into force on December 31, 2008.

....

Source of Funds Inquiry - Steps:

Note – If your retainer involves the receipt, payment, or transfer of funds, you are required to obtain and record information from your client about the source of funds for their transaction. You are not required to obtain that information from other parties to the transaction or verify the information from your client about the source of the funds. However, the source of funds inquiry helps to ensure compliance with existing obligations. Be on the look out for red flags or inconsistencies that might indicate you are assisting or facilitating fraud or other illegal conduct.

1. What is the economic activity that generated your client's funds?
 - Record the following:
 - What generated the client's funds? (e.g. salary, bank loan, inheritance, court order, sale of a property or business, settlement funds)
 - The payer's full name, occupation, and contact information
 - The relationship of the payer to the client (where the payer isn't the client)
 - Ensure your accounting records reflect:
 - The date on which the funds were received from or transferred by the payer
 - How did you receive the funds? (e.g. bank draft, cheque, wire, cash, e-transfer or electronic funds transfer)
 - Make copies of any supporting documents for your file.
 - Record any follow up inquiries made.
2. Is the information you have received from the client reasonable in the circumstances and consistent with what you know about the client (i.e. their occupation, economic profile, activities)?
3. Does the client's explanation for the source of the funds raise any red flags? Is it suspicious otherwise?

If the information you have received from the client about the source of funds is reasonable and there are no red flags or anything else suspicious or unusual about the client's explanation, then the inquiry is complete.

If the information from your client is unreasonable or inconsistent with what you know about them, and they cannot provide a satisfactory explanation as to the source of the funds or documentation to support their explanation, consider whether you should act for the client. If you are already acting for the client, consider whether you should continue to act or have a duty to withdraw on the basis that you would be assisting a client in fraud or other illegal conduct.

If you require assistance navigating the source of funds requirement, contact the Law Society's Practice Management Helpline (416-947-3315 or 1-800-668-7380 ext. 3315)



Monitoring Requirement - Steps:

During a retainer that involves the receipt, payment, or transfer of funds, you must periodically determine whether your client's instructions, the information you obtained about your client's activities, and the source of funds used in the transaction are consistent with the purpose of the retainer and the information you know about the client. This requirement also assists in fulfilling existing obligations to know your clients, understand the nature of their retainers, and avoid assisting in or encouraging illegal conduct. Your obligation to monitor ends at the completion of the retainer.

1. Are there any red flags present?
 - Review the risk factors for money laundering and other illegal activity applicable to the practice area as detailed in the Law Society's risk assessment case studies and practice risk advisories
2. Conduct a risk assessment for the matter. Consider:
 - What is the level of risk of the transaction? Are the legal services you are providing susceptible to being used for money laundering? (e.g. real estate or establishing, purchasing, selling a business)
 - What is the level of risk related to the client?
 - What is the level of risk for the matter? (e.g. is the transaction based in a high-risk country, is the transaction unusually complex, are you being retained for a matter outside of your practice area and if so why?)
3. Based on the risk assessment, determine the appropriate nature, degree, and frequency that you should monitor your relationship with the client. A low risk matter may require minimal or infrequent monitoring. A longer and more complex retainer, with red flags present and a high-risk assessment, will require more frequent monitoring.
4. Monitor your professional relationship with the client, taking into consideration the risk assessment and any red flags, and record the information. Monitoring will help alert you to changes arising from the retainer. For example ask:
 - Is the client altering the scope of the retainer or asking you to provide additional legal services or legal services that differ from your understanding at the start of the retainer?
 - Is there a reasonable explanation for the changes to the client's instructions?

Consider:

- Periodically inquiring about the source of funds for each transaction.
- Periodically confirming information you've obtained about the client. Update records if necessary.

If at any point you know or ought to know that you are or would be assisting a client in fraud or other illegal conduct, you must immediately cease to and not engage further in any activities that would assist the client in fraud or other illegal conduct and withdraw from representation of the client.

If you require assistance navigating the monitoring requirement, contact the Law Society's Practice Management Helpline (416-947-3315 or 1-800-668-7380 ext. 3315).

Firm Name

Client Identification and Verification Method Confirmation Forms

Where your client is an individual complete the applicable sections including noting the supporting document(s) used.

Identification – For All Clients Record:

• Full Name:
• Home address and phone number:
• Business address and phone number:
• Occupation or occupations:

A. Government-Issued Identification Method of Verification

<input checked="" type="checkbox"/>	Government-Issued Identification	✓ Valid, original and current government-issued identification with a unique identification number
<p>To use the government-issued identification method you can refer to any valid, original and current document with the individual's name, photograph, and a unique identifying number issued by a federal, provincial or territorial government.</p> <p>A foreign government issued photo identification document is acceptable if it is equivalent to a Canadian issued photo identification document</p> <p>You or your agent must view the original document in the presence of the individual in order to compare them with their photo.</p> <p>Examples of Acceptable Photo Identification:</p> <ul style="list-style-type: none">• Canadian or Foreign Passport• Canada Permanent Resident card• Secure Certificate of Indian Status• Provincial driver's licence• Provincial Services Card		
Document used		Record the information
<input checked="" type="checkbox"/>	The client's name and date of birth	Name/Type of document: _____ Unique Identification Number: _____ Expiry date: _____
<ul style="list-style-type: none">• Attach a copy of the above-noted document to this form.		

[Firm] Representative who verified information:

Signature: _____

Print Name: _____ Date Information Verified: _____

A. Dual Process Method of Verification

<input type="checkbox"/>	Dual Process	✓ Two authentic, valid and current documents from independent reliable sources
<p>To use the dual process method, you can refer to any two of the following categories*:</p> <p>(1) the client's name and date of birth; (2) the client's name and address; or (3) the client's name and confirm they have a deposit account, credit card or other loan account with a financial entity.</p> <p><i>*document cannot be from the same source: e.g. RBC bank statement to confirm individual's name and address and RBC bank statement to confirm individual's name and confirm they have a deposit account.</i></p>		
Individual's Name:		
Categories used: (must be two) must be independent sources		Record the information below next to category used:
<input type="checkbox"/>	The client's name and date of birth	Name of source: _____ Type of information consulted: _____ Account number or reference number: _____
<input type="checkbox"/>	The client's name and address	Name of source: _____ Type of information consulted: _____ Account number or reference number: _____
<input type="checkbox"/>	The client's name and confirms that they have a deposit account, credit card or other loan account with a Canadian financial entity.	Name of source: _____ Type of information consulted: _____ Account number or reference number: _____
<ul style="list-style-type: none"> • Attach a copy of the above-noted documents to this form. 		

[Firm] Representative who verified information:

Signature: _____

Print Name: _____ Date Information Verified: _____

B. Credit File Method of Verification

	Credit File Method	Requirements: <ul style="list-style-type: none">✓ Be from a Canadian credit bureau (Equifax or TransUnion)✓ In existence for at least three years; and✓ Match the name, address and date of birth of individual
Record the following information:		
Individual's Name:		
Date you consulted or searched credit file:		
Name of Canadian credit bureau holding the credit file:		
Individual's Credit file number:		
<ul style="list-style-type: none">• Attach a copy of the credit file identification document to this form.		

[Firm] Representative who verified information:

Signature: _____

Print Name: _____ Date: _____



BY EMAIL

May 7, 2021

The Law Society of Ontario
Osgoode Hall
130 Queen Street West
Toronto, ON
M5H 2N6

**Attention: Teresa Donnelly, Treasurer
Megan Shortreed, Chair, Professional Regulation Committee**

RE: Implementation of 2018 Amendments to the Anti-Money Laundering and Terrorist Financing Model Rules

Dear Teresa and Megan:

Thank you for the opportunity to assist the Law Society of Ontario in understanding the rationale for the Federation's Anti-Money Laundering and Terrorist Financing Model Rules, the 2018 amendments (the "**2018 Amendments**") in particular, and the Federation's views as to the strategic importance of law societies across Canada continuing to be proactive in this area. Canada's law societies have been regulating to address the risks of money laundering and terrorist financing that may arise in the practice of law for almost 20 years. The decision to proactively regulate was part of a two-pronged strategy developed in the early 2000s in response to the introduction of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("*PCMLTFA*") which purported to impose obligations on legal counsel to report clients' suspicious and large cash transactions to a federal government agency. In addition to developing the Cash Transactions Model Rule, which limits the amount of cash legal counsel may receive, the Federation launched a constitutional challenge to the legislation. Early success in the litigation led to the suspension of the reporting obligations for legal counsel and ultimately to an amendment to the federal legislation to exempt legal counsel from those requirements.

In the late 2000s the government renewed efforts to bring the legal profession within the ambit of the *PCMLTFA*, this time in the form of regulations addressing client identification verification. In keeping with its original strategy, the Federation developed the Model Rule on Client Identification and Verification, which was approved by the Federation Council in 2008 and subsequently adopted and implemented by all Canadian law societies. Faced with the government's continued insistence that its anti-money laundering legislation and regulations should apply to members of the legal profession, the Federation also renewed its constitutional

challenge and, in 2015 the Supreme Court of Canada ruled in its favour. The Court found that the legislation, as applied to legal counsel, infringed on solicitor-client privilege and on a lawyer's duty of commitment to the client's cause and was thus unconstitutional. In reaching this decision, the Court relied on the existence of a consistent regulatory scheme adopted by the law societies and applied to members of the legal profession across Canada to mitigate risks of money laundering and terrorism financing.

It is important to note that while the litigation was successful, the Supreme Court left open the possibility that the government could nonetheless develop constitutionally compliant legislation to bring the legal profession within the scope of the government's anti-money laundering regime. And there is considerable pressure on the government to do just that, including from the Financial Action Task Force ("FATF"), the international anti-money laundering watchdog of which Canada is a founding member. The FATF's 2016 mutual evaluation report of Canada was highly critical of the exclusion of the legal profession from the federal anti-money laundering regime calling it a significant loophole and identifying bringing legal counsel within the federal AML regime as a priority action for Canada. Later this year, the FATF will release its 5-year review of Canada's efforts to remedy the deficiencies in its AML regime identified in the 2016 evaluation.

Criticism of the fact that legal counsel are exempted from the federal anti-money laundering regime has also surfaced during hearings of the Commission of Inquiry into Money Laundering in British Columbia (known also as the Cullen Commission). The Commission's mandate makes specific reference to the legal profession and a full week of hearings has already been dedicated to examining money laundering and the regulation of money laundering risks in the profession. During examination of witnesses for the Law Society of British Columbia, which is a party to the proceedings, Commission counsel posed a number of questions that suggested that the exclusion of legal profession from the federal AML legislation creates a gaping hole in the federal regime. Frederica Wilson, Executive Director, Policy and Public Affairs and Deputy CEO of the Federation, testified on behalf of the Federation and despite pointed questioning by Commission counsel was able to make compelling arguments that the Federation and the law societies have been leaders in regulating the risks of money laundering and the financing of terrorism that may arise in the practice of law.

The decision by the Federation to establish a special working group to review the model rules reflected the importance of continuing to be proactive on this file. The 2018 Amendments developed by the Federation's Anti-Money Laundering and Terrorist Financing Working Group (the "AMLTF Working Group") clarify and strengthen the existing rules that have been in force in Ontario for many years. Three new obligations have also been added to the client identification and verification rules: a duty to enquire into the beneficial ownership of organizations, a duty to enquire into source of funds and certain ongoing monitoring obligations based on the level of assessed risk in a given client matter. The 2018 Amendments do not require perfection from legal professionals in respect of any of these obligations. The expectation is that lawyers will be attuned to potential red flags and will exercise appropriate due diligence to ensure they are not



assisting a client in the commission of a criminal offence. The duties in the model rules are intended to assist lawyers from unwitting involvement in or facilitation of criminal conduct by clients. They also ensure that lawyers cannot be wilfully blind to such risks. In this way the provisions in the model rules complement long standing rules of professional conduct prohibiting lawyers from assisting a client in the commission of a criminal offence.

The relationship between the Federation and the federal government on the anti-money laundering file has improved significantly in recent years. A joint working group of government and Federation representatives was established in 2018 to provide a forum to share information about money laundering threats and to discuss the work of the Federation and the law societies to address the risks present in the practice of law. The government has indicated publicly that it supports this collaborative approach and we have been advised that it has no plans at present to renew efforts to regulate members of the legal profession. As encouraging as this more collaborative approach is, it is clear from our engagement with the representatives of the Department of Finance that the likelihood of ongoing criticism by the FATF and its demands that the legal profession be covered by federal anti-money laundering legislation remains a source of serious concern for the government. It ought also to be of concern to the law societies and their members.

Government representatives have been direct in advising the Federation that it is essential for the federal government to be able to demonstrate to the FATF that there is a nationally consistent regulatory scheme in place to address risks of money laundering and terrorism financing arising in legal practice. Implementation of the rules developed collaboratively by the law societies through the Federation, including the 2018 Amendments, is thus critical to persuading the government to continue with its collaborative approach rather than yielding to pressure to introduce new regulatory measures. With 55,000 lawyers and 9,000 paralegals, the Law Society of Ontario is by far the largest legal regulator in Canada, regulating almost half of the legal professionals in the country. I cannot overstate the importance of ensuring that Ontario lawyers and paralegals are covered by the same anti-money laundering rules as apply to members of the legal professions in all other Canadian jurisdictions.

I understand that some in your jurisdiction may have expressed concerns about the administrative burden of the 2018 Amendments. The Presidents of the law societies that have already implemented the amendments have advised that while similar concerns were raised by some members *before* implementation, no concerns about administrative burden have been raised *since* the amendments been in force. From my perspective as a practising lawyer and from the experience of others with whom I have spoken, I am persuaded that the new requirements are easily accommodated through the development of appropriate processes and intake forms. To facilitate implementation of the amended rules and compliance by members of the profession, the Federation's AMLTF Working Group has also developed a number of useful educational and resource documents, with more in the works. These materials have been shared with all of the law societies to use as they see fit and many of the jurisdictions that have implemented the 2018 Amendments have made them available to their members, whether in

their original form or as modified by the law society. I would like to thank staff at the Law Society of Ontario who have been key contributors to our anti-money laundering work for many years and who have provided assistance and input into these recent projects. Their contribution has been invaluable.

As I note above, continuing to ensure that the risks of money laundering and the financing of terrorism that lawyers and other legal professionals may encounter in their practice are addressed through nationally consistent rules and regulations, is of critical importance. I very much hope that you and your colleagues in Convocation will agree.

Yours very truly,

A handwritten signature in black ink, appearing to read "Steve Raby", with a large, sweeping flourish extending to the right.

Steve Raby, Q.C.
President

Overview - Requirements for Entities Subject to the PCMLTFA¹

Canadian lawyers are not currently subject to the *Proceeds of Crime Money Laundering and Terrorist Financing Act* and its regulatory requirements.

In fact, Canada is one of the few Financial Action Task Force member countries that does not impose obligations on lawyers as part of their anti-money laundering and anti-terrorist financing regime. Lawyers in most other countries must comply with requirements similar to those applicable to individuals or entities that are subject to our federal regime (known as “reporting entities”).

Among reporting entities are professionals similar to lawyers, including accountants and notaries in British Columbia. The requirements applicable to these professionals provide some insight into what would be required of licensees if the federal government were to successfully bring them within the federal regime.

Obligations applicable to reporting entities can be grouped into the following five categories:

1. **Compliance Program**

The establishment and implementation of a compliance program is the basis for meeting all additional requirements. There are five required elements of a compliance program:

- The appointment of a Compliance Officer (person who is responsible for the implementation of the compliance program)
- The development and application of written compliance policies and procedures, that must be kept up-to-date and must include enhanced measures to mitigate high risks
- A risk assessment of your business activities and relationships
- The development and maintenance of a written ongoing compliance training program for employees, agents, and other authorized to act on your behalf
- The institution and documentation of an effective review of your compliance program every two years at minimum, for the purpose of testing its overall effectiveness

2. **Know Your Client**

Similar to current and proposed requirements for licensees under By-Law 7.1, reporting entities must:

- Identify and verify the identity of clients
- Keep a record of all business relationships and conduct ongoing monitoring of those relationships
- Determine and record whether a third party is giving instructions with respect to handling funds or conducting a transaction

3. **Reporting**

Reporting entities must report to the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”) on the following:

¹ From Financial Transactions and Reports Analysis Centre of Canada – [Reporting requirements for accountants](#).

- Suspicious Transaction Reports must be submitted within 30 days of determining that there are reasonable grounds to suspect that a transaction or an attempted transaction is related to the commission or attempted commission of a money launder or terrorist financing offence.
- Property that is within the individual's or the entity's possession or control that is owned or controlled by a terrorist or terrorist group must be reported immediately. Reports must also be made to the RCMP and CSIS.
- Cash transactions of \$10,000 or more within a 24-hour period must be reported to FINTRAC within 15 days

4. **Record Keeping**

Reporting entities must record the following and retain

- Suspicious transaction report records, must be kept for at least five years from the date the report was submitted
- Large cash transaction records, must be kept for at least 5 years from the date the record was created
- Receipt of funds records, must be kept for funds received in any form (including by cheque, bank draft, wire transfer, or any other means) in the amount of \$3,000 or more, and must be retained for at least five years from the date the record was created
- Reasonable measures records, which record instances when reasonable measures were taken but were unsuccessful with respect to any requirement (for instance where no response was received or a conclusive determination could not be made). These records must be retained for at least five years following the date they were created.

5. **Examinations**

Under the PCMLTFA, FINTRAC is provided with the authority to inquire into the business and affairs of any reporting entity. In order to conduct those inquiries, FINTRAC conducts two types of examinations:

- On-site examinations. These examinations are usually scheduled in advance, with the subject required to produce documentation including compliance policies and procedures, assessment of risks, and measures to mitigate high risks. In some circumstances, FINTRAC may conduct on-site examinations without prior notice
- Desk examinations. These examinations are conducted by FINTRAC compliance officers over the telephone from their desks. For such examinations, documentation will usually be requested in advance and provided electronically.

Examinations result in three possible outcomes:

- No further compliance or enforcement action
- Follow-up compliance action
- Recommendation for an administrative monetary penalty