



Report to Convocation April 24, 2008

Professional Regulation Committee

Committee Members

Clayton Ruby, Chair
Julian Porter, Vice-Chair
Linda Rothstein, Vice-Chair
Melanie Aitken
Christopher Bredt
Tom Conway
Brian Lawrie
Patrick Furlong
Gary Gottlieb
Ross Murray
Sydney Robins
Bonnie Tough
Roger Yachetti

Purpose of Report: Decision

**Prepared by the Policy Secretariat
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COMMITTEE PROCESS

1. The Professional Regulation Committee (“the Committee”) met on April 10, 2008. In attendance were Linda Rothstein (Vice-chair and Acting Chair), Melanie Aitken, Tom Conway and Ross Murray. Staff attending were Naomi Bussin, Lesley Cameron, Terry Knott, Zeynep Onen, Elliot Spears, Sybila Valdivieso and Jim Varro.

AMENDMENTS TO BY-LAW 7.1 RESPECTING CLIENT IDENTIFICATION AND VERIFICATION REQUIREMENTS

Motion

- 2. That Convocation amend By-Law 7.1 (Operational Obligations and Responsibilities) to add requirements for client identification and verification, effective June 30, 2008, as set out in Appendix 1 to this report. The formal motion to amend the By-Law is at Tab 3.**

Introduction

3. The Federation of Law Societies of Canada¹ has launched a number of initiatives to combat the threat of money laundering and terrorist financing, while maintaining the public interest in a strong and independent legal profession. The most recent of these initiatives is a Model Rule on Client Identification and Verification Requirements.
4. The Model Rule has been adopted by the Federation Council as the Federation's Model Rule. Law societies in Canada are now in the process of implementing the Model Rule within their regulatory regimes to create a national, uniform standard for client identification and verification requirements.
5. To implement the provisions of the Model Rule as Law Society regulations, amendments to By-Law 7.1 (Operational Obligations and Responsibilities) are required. The amendments are being recommended jointly by the Committee and the Paralegal Standing Committee.

¹ The Federation of Law Societies of Canada is the national coordinating body of the 14 provincial and territorial governing bodies of the legal profession in Canada. Its member law societies are charged with the responsibility of regulating Canada's 95,000 lawyers and 3,500 notaries in Quebec in the public interest. The Federation is a leading voice on a wide range of issues of national and international importance involving justice and regulatory matters critical to the protection of the public.

6. The amendments to the By-Law, Part III of which is to be effective June 30, 2008, are at **Appendix 1**. **Appendix 2** is a redline version of By-Law 7.1 showing the amendments. **Appendix 3** includes the Model Rule and an overview of its provisions.
7. The Federation of Law Societies has prepared material, including “FAQs” on the Model Rule’s requirements, for use by Law Societies in their communication efforts on the new requirements. This material will be adapted to Law Society communications to licensees about the new By-Law 7.1 requirements.

Background to Development of the Federation’s Model Rule

8. Growing global concern regarding money laundering led to the 1989 formation of the Financial Action Task Force (“FATF”), an inter-governmental organization which develops and promotes policies and legislation to combat money laundering and terrorist financing. In its 40 Recommendations on money laundering and 9 Special Recommendations on Terrorist Financing, the FATF recommends that countries implement legislation enabling state authorities to obtain information from financial institutions and intermediaries (such as lawyers) to facilitate the investigation and prosecution of money laundering and terrorist financing.
9. Following the 40 Recommendations, in 2000 the Canadian Parliament passed legislation now known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the “Act”). Under the Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions (later prescribed in regulations as those involving \$10,000 or more in cash). Reporting persons are prohibited from “tipping off” their client about having made the report. Reports must be made to the Financial Transactions and Reports Analysis Centre of Canada (“FINTRAC”), a federal agency which was set up to receive and analyze financial intelligence and disclose it to police.

10. Despite concerns expressed by the Federation, in November 2001 the federal government promulgated Regulations making the Act applicable to lawyers, and requiring legal counsel to secretly report suspicious transactions to FINTRAC. The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated proceedings in the Supreme Court of British Columbia challenging the constitutionality of the legislation and seeking interlocutory relief from the application of the Regulations to legal counsel.
11. The Federation contended that the legislation required lawyers to act as secret agents of the state, collecting information about clients against their interests and reporting to a government agency. As a result, the legislation threatened fundamental Canadian constitutional principles, which require that lawyers maintain undivided loyalty to their clients, consistent with the independence of the Bar and the integrity of the administration of justice. The Supreme Court of Canada has affirmed that lawyers, who are bound by stringent ethical rules, must not have their offices turned into archives for the use of state authorities.
12. The B.C. Supreme Court judge agreed with these concerns, finding that the legislation represented “an unprecedented intrusion into the traditional solicitor-client relationship”. She granted an interim injunction such that legal counsel were not required to report “suspicious transactions” pending a full hearing on the merits of the case. The B.C. Court of Appeal affirmed the Order, and the Supreme Court of Canada denied the government’s application for a stay of the Order. Similar Orders were granted in other provinces and territories across Canada.
13. As a result of these interlocutory Orders, in May 2002 the Attorney General of Canada agreed to suspend the application of the legislation to all Canadian lawyers (including Québec notaries), pending a final decision on the merits of the constitutional challenge to the legislation. The hearing of that challenge has now been adjourned generally, and all lawyers in Canada remain exempt from the legislation by virtue of the injunction.

14. The federal government indicated that following consultations with the legal profession, the government intended to put in place a new regulatory regime for lawyers that more appropriately reflected their duties.
15. Legislative developments since the adjournment have resulted in amendments to the Act exempting lawyers from the reporting requirements and the publication of new regulations that purport to apply to lawyers with respect to client identification and verification. These matters are discussed later in this report.

The Federation's Initiatives to Combat Money Laundering and Terrorist Financing

16. Independently of the litigation, the Federation through its Committee on Anti-Money Laundering Legislation launched its own initiatives to fight money laundering and terrorist financing.

The "No Cash" Model Rule

17. One of these initiatives was the Federation's October 2004 "No-Cash" Model Rule, pursuant to which each law society has implemented rules restricting lawyers from receiving cash in amounts over \$7,500.²
18. The adoption of the No-Cash Rule rendered unnecessary the obligation under the Act, which the federal government sought to impose on lawyers, to report transactions involving \$10,000 or more in cash.
19. In discussions with the Department of Finance during development of the Rule, the Federation affirmed that Canadian law societies take seriously their responsibility to regulate the profession in the public interest, based on a strong public interest in an independent Bar that provides confidential, loyal access to

² The Federation's "No Cash" Model Rule was adopted by Convocation and implemented through amendments to By-Laws 18 and 19 and Commentary to Rule of Professional Conduct 2.02(5) on January 27, 2005. These provisions are now in By-Law 9.

justice and a public interest in ensuring that lawyers do not participate in or facilitate money laundering or terrorist financing.

20. Implementation of the No-Cash Rule by all law societies demonstrated their commitment to both of these ideals.

Amendments to the Act Following Implementation of the No-Cash Rule

21. Following law societies' adoption of the No-Cash Rule, in October 2006 the federal government introduced Bill C-25, which made a series of amendments to the Act. The bill, which received Royal Assent in December 2006, included an amendment to exempt lawyers from the reporting requirements. Section 10.1 of the Act now reads:

Sections 7 and 9 do not apply to persons or entities referred to in paragraph 5(i) or (j) who are, as the case may be, legal counsel or legal firms, when they are providing legal services.

22. Finance Minister James Flaherty addressed the No-Cash Rule and the legislative amendment in his presentation on Bill C-25 before the relevant Standing Senate Committee on Banking, Trade and Commerce on December 6, 2006:

...I would note that Bill C-25 excludes the legal profession from reporting suspicious and prescribed transactions under the act, consistent with lawyers' obligations in respect to [sic] solicitor-client privilege.

As you may know, the provincial and territorial law societies have adopted a model rule that prohibits lawyers from receiving cash over \$7,500 in respect of any file. This will address the placement of cash into the financial system and will replace the large cash reporting requirement.

23. Prior to introduction of the bill, concerns relating to the legal profession were expressed by the Department of Finance and the Auditor General of Canada in their reviews of the Canadian anti-money laundering and terrorist financing regime.

24. In a November 2004 Report, the Auditor General indicated that “the removal of lawyers from the reporting requirements of the legislation in Canada means that our anti-money laundering system does not fully meet international [FATF] standards, yet meeting them was one of the objectives of the National Initiative to Combat Money Laundering.”
25. At the same time, the Department of Finance began focusing on the FATF Recommendations that addressed standards for customer due diligence. In a June 2005 consultation paper, the Department of Finance set out the government’s proposed regulations concerning customer due diligence and record-keeping requirements for professional intermediaries. The paper did not propose that the legal profession would be subject to these requirements. However, the paper indicated that the government would assess the consistency and effectiveness of the law societies’ No-Cash rules, and consider whether the legal profession should be subject to requirements concerning customer due diligence. The paper also noted the FATF Recommendation that such requirements should be implemented by legislation or regulations, and not through self-regulatory bodies like the law societies. The Federation’s consultations with the Department on this matter were continuing throughout this period.
26. Bill C-25 implemented many of the proposals in the consultation paper and included amendments to the Act to enhance the client identification, record-keeping and reporting measures applicable to financial institutions and financial intermediaries. Included were an amended s. 6 and a new s. 6.1 of the Act, which are enabling provisions for enhanced client identification and verification, and record-keeping:
 6. Every person or entity referred to in section 5 shall keep and retain prescribed records in accordance with the regulations.

6.1 Every person or entity referred to in section 5 shall verify, in the prescribed circumstances and in accordance with the regulations, the identity of any person or entity.

27. Client identification and verification regulations under these provisions were pre-published by the Department of Finance at the end of June 2007. The regulations purport to regulate how lawyers, and others, should identify and verify the identity of clients. The regulations were published (in final form) in December 2007 and, with respect to the legal profession, come into force in December 2008.³
28. The new regulations include detailed requirements for client identification, verification of client identity, record-keeping and compliance. The requirements are triggered when the lawyer receives or pays funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail, on behalf of any person or organization, or gives instructions in respect of these activities. The new regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities, with some narrow exceptions. **Appendix 4** includes a summary of the regulations as they apply to the legal profession.

The Concept of the Second Model Rule

29. The concept for the Federation's Model Rule on Client Identification and Verification Requirements was formulated in mid-2005, and was outlined in terms of appropriate client identification and verification requirements for lawyers in a September 2005 letter sent by the Federation to the Department of Finance in response to the Department's consultation paper, noted earlier. In that letter, the Federation said:

Within the next few months, the Federation will be considering a proposal for a second Model Rule on certain client identification

³ The injunction described earlier in this report provides that any new Regulations will not apply to the legal profession unless the Federation of Law Societies consents.

and verification requirements that would be imposed by its member law societies on all lawyers in Canada. These requirements would be adopted by the law societies pursuant to their statutory duties to uphold and protect the public interest in the administration of justice. ...

The proposed Model Rule would make all lawyers in Canada subject to certain client identification and verification requirements when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of [specified activities respecting payment and transfer of funds].⁴

Overview of the Model Rule

30. Creation of the Model Rule on Client Identification and Verification Requirements was an independent initiative of the Federation to promote the public interest in ensuring that lawyers conduct appropriate due diligence on their clients. This includes identifying and verifying the identity of a client, which will assist lawyers in determining whether a client is attempting to use the lawyer to launder funds. In many respects, the Model Rule codifies the steps a prudent lawyer would take in the normal course to verify a client's identity upon being retained to provide legal services.
31. The Model Rule respects the threshold between constitutional and unconstitutional requirements imposed on lawyers when it comes to the gathering of information from clients: a lawyer must obtain and keep all information needed to serve the client, but must not obtain any information which serves only to provide potential evidence against the client in a future investigation or prosecution by state authorities.
32. Information recorded by lawyers pursuant to the Model Rule could be obtained by law societies only for the purpose of ensuring compliance with applicable law

⁴ The Federation Council received a first draft of the Model Rule in January 2006. Dialogue between the Federation and the Department of Finance on matters relating to requirements for lawyers for client identification and verification continued throughout 2006, with notice that federal regulations on these standards applicable to the legal profession would be forthcoming in 2007. The regulations were published (in final form) in December 2007. The Model Rule was finalized in early 2008.

society rules. Information obtained by law societies would not be provided to state authorities without a court Order which gave due consideration to solicitor-client confidentiality and privilege existing in respect of the information.

33. Like the adoption of the No-Cash Rule, national implementation of the Model Rule on Client Identification and Verification will demonstrate that responsible self-governance by the law societies makes federal regulation of the legal profession on this subject unnecessary.

Consultation with the Profession on the Model Rule

34. In the fall of 2007, at the request of the Federation, law societies across Canada reviewed the Model Rule and the proposed regulations at the request of the Federation. The purpose was to assist the Federation in finalizing the text of the Rule and in addressing concerns about the proposed regulations in the Federation's ongoing dialogue with the Department of Finance.
35. Some law societies, such as the Law Society of Upper Canada, Law Society of British Columbia and the Law Society of New Brunswick, requested the input of members. The Law Society of Upper Canada published the request for comment on its website with relevant background material, included notice of the request in its *e-Bulletin* and also distributed direct notice of the request by a broadcast e-mail to all licensees who have provided an e-mail address to the Law Society for such purposes.
36. By early November 2007, responses from the majority of law societies had been received by the Federation. Over 40 individual responses from lawyers were received. The Law Society of Upper Canada also requested written responses from certain legal organizations and large law firms. Five letters resulted from this request.

37. While a few respondents had concerns about the imposition of the requirements, the vast majority understood the need to formulate rules on lawyer's obligations to identify clients and perform the due diligence set out in the Model Rule. A number of respondents identified issues of interpretation and compliance but also included constructive suggestions for clarification of these issues and other provisions. Many of these suggestions were incorporated in the Model Rule.

The Proposed Amendments to By-Law 7.1 Based on the Model Rule

38. The proposed By-Law amendments which implement the Model Rule will ensure that appropriate due diligence requirements apply to licensees in Ontario as a matter of Law Society regulation. Appendix 3 includes a summary of the Model Rule's provisions which are incorporated in the By-Law amendments.
39. The amendments require licensees to follow certain client identification and verification procedures when the licensee is retained by a client and engages on behalf of a client or gives instructions on behalf of a client in respect of the activities specified in the By-Law. The amendments also require licensees to keep a record of the information and documents obtained to identify and verify the identity of clients.
40. The client identification requirements apply whenever a licensee provides professional services to a client. These requirements call for basic identification information about individual or organizational clients in every retainer. The identify *verification* requirements are triggered where the licensee receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. A number of exceptions are included. For example, funds paid to the licensee by a financial institution, public body, or a public company, or received from the trust account of another licensee are exempt.
41. The By-Law requires a licensee to withdraw from the representation of a client in a matter when the licensee reasonably suspects that the provision of the licensee's

services would assist a client in criminal or illegal activity. The duty applies to new matters for existing clients after the By-Law is in force if the suspicion arises during the identification and verification activities. The duty applies to all matters, before and after the By-Law is in force, if the suspicion arises during the course of the retainer generally.

Summary

42. The By-Law amendments are in important addition to licensee regulation. New regulations adopted by the law societies in Canada within the past three years have enhanced the legal profession's ability to regulate its members in the public interest and to respond appropriately to client activity that may be an indication of money laundering and other illegal activity. Implementation of the new Model Rule through the By-Law 7.1 amendments will add an important element to this regulatory framework.

**PROPOSED BY-LAW 7.1 PROVISIONS ON CLIENT IDENTIFICATION AND
VERIFICATION
(effective June 30, 2008)**

PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

“financial institution” means,

- (a) a bank to which the *Bank Act* (Canada) applies,
- (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,
- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, or
- (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;

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

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

“private company” means a company the constating documents of which,

- (a) restrict the right to transfer shares,
- (b) limit the number of its shareholders, exclusive of persons who are in the employ of the company, to 50, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (c) prohibit any invitation to the public to subscribe for its shares or securities;

“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 and includes a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- (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 (Ontario)* or 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 under the *Excise Tax Act (Canada)* or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

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) and (3), 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), and
 - (ii) comply with the 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 who has already complied with the client identification and verification requirements set out in section 23; or
- (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by another licensee who has already complied with the client identification and verification requirements set out in section 23.

Exemptions re certain funds

(3) A licensee is not required to comply with the client verification requirements set out in subsection 23 (4) in respect of funds,

- (a) received from a financial institution, public body or company that is not a private company;
- (b) paid to a financial institution or public body;
- (c) paid to a client that is a company that is not a private company;
- (d) paid to another licensee in trust, on the direction of a client;
- (e) received from the trust account of another licensee;
- (f) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (g) paid pursuant to a court order or to pay a fine or penalty;

- (h) paid as a settlement in any legal or administrative proceedings; or
- (i) received for professional fees, disbursements, expenses or bail.

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, 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 company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.
- 7. If the client is an organization, the name, position and contact information for those individuals 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 beneficiary or a principal, information about the beneficiary or principal 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 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:

- 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.

Same, previous identification

(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee 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, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information.

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1) upon 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 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 beneficiary or principal 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 beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, 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 beneficiary or principal 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 client is an individual who is not instructing the licensee 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 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.

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

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

(11) A licensee complies with the verification requirements set out in subsection (4) if another person acting on behalf of the licensee complies with those requirements provided that, the licensee and the other person, prior to the person acting on behalf of the licensee, enter into a written agreement specifying the steps that the person will be taking on behalf on 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 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.

Copies 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 a person 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.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client information and verification requirements set out in section 23, reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or 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 June 30, 2008.

PART IV

WITHDRAWAL OF SERVICES

Application of Part

26. This Part applies to all matters in respect of which a licensee is retained to provide her or his professional services to a client, including matters in respect of which the licensee was retained before this Part came into force and matters in respect of which the licensee is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw after being retained

27. If a licensee while retained by a client reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or 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.

REDLINE VERSION OF BY-LAW 7.1 WITH AMENDMENTS

BY-LAW 7.1

Made: October 25, 2007
Amended: November 22, 2007
January 24, 2008

OPERATIONAL OBLIGATIONS AND RESPONSIBILITIES

PART I

GENERAL

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Interpretation

1. (1) In this Part ~~By-law~~,

“licensee” means a licensee who holds a Class L1 licence;

“non-licensee” means an individual who,

- (a) is not a licensee;
- (b) is engaged by a licensee to provide her or his services to the licensee; and
- (c) expressly agrees with the licensee that the licensee shall have effective control over the individual’s provision of services to the licensee.

Interpretation: “effective control”

(2) For the purposes of subsection (1), a licensee has effective control over an individual’s provision of services to the licensee when the licensee may, without the agreement of the individual, take any action necessary to ensure that the licensee complies with the *Law Society Act*, the by-laws, the Society’s rules of professional conduct and the Society’s policies and guidelines.

PART II

SUPERVISION OF ASSIGNED TASKS AND FUNCTIONS

Application

2. This Part does not apply to the provision of legal services by a student under the supervision of a licensee who is approved by the Society.

Assignment of tasks, functions: general

3. (1) Subject to subsection (2), a licensee may, in accordance with this Part, assign to a non-licensee tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client.

Assignment of tasks, functions: affiliation

(2) A licensee who is affiliated with an entity under By-Law 7 may, in accordance with this Part, assign to the entity or its staff, tasks and functions in connection with the licensee's practice of law in relation to the affairs of the licensee's client only if the client consents to the licensee doing so.

Assignment of tasks, function: direct supervision required

4. (1) A licensee shall assume complete professional responsibility for her or his practice of law in relation to the affairs of the licensee's clients and shall directly supervise any non-licensee to whom are assigned particular tasks and functions in connection with the licensee's practice of law in relation to the affairs of each client.

(2) Without limiting the generality of subsection (1),

- (a) the licensee shall not permit a non-licensee to accept a client on the licensee's behalf;
- (b) the licensee shall maintain a direct relationship with each client throughout the licensee's retainer;
- (c) the licensee shall assign to a non-licensee only tasks and functions that the non-licensee is competent to perform;
- (d) the licensee shall ensure that a non-licensee does not act without the licensee's instruction;
- (e) the licensee shall review a non-licensee's performance of the tasks and functions assigned to her or him at frequent intervals;

- (f) the licensee shall ensure that the tasks and functions assigned to a non-licensee are performed properly and in a timely manner;
- (g) the licensee shall assume responsibility for all tasks and functions performed by a non-licensee, including all documents prepared by the non-licensee; and
- (h) the licensee shall ensure that a non-licensee does not, at any time, act finally in respect of the affairs of the licensee's client.

Assignment of tasks, functions: prior express instruction and authorization required

5. (1) A licensee shall give a non-licensee express instruction and authorization prior to permitting the non-licensee,
- (a) to give or accept an undertaking on behalf of the licensee;
 - (b) to act on behalf of the licensee in respect of a scheduling or other related routine administrative matter before an adjudicative body; or
 - (c) to take instructions from the licensee's client.

Assignment of tasks, functions: prior consent and approval

(2) A licensee shall obtain a client's consent to permit a non-licensee to conduct routine negotiations with third parties in relation to the affairs of the licensee's client and shall approve the results of the negotiations before any action is taken following from the negotiations.

Tasks, functions that may not be assigned: general

6. A licensee shall not permit a non-licensee,
- (a) to give the licensee's client legal advice;
 - (b) to act on behalf of a person in a proceeding before an adjudicative body, other than on behalf of the licensee in accordance with subsection 5 (1), unless the non-licensee is authorized under the *Law Society Act* to do so;
 - (c) to conduct negotiations with third parties, other than in accordance with subsection 5 (2);
 - (d) to sign correspondence, other than correspondence of a routine administrative nature;

- (e) to forward to the licensee's client any document, other than a routine document, that has not been previously reviewed by the licensee; or
- (f) to use the licensee's personalized specially encrypted diskette in order to access the system for the electronic registration of title documents.

PART III

COLLECTION LETTERS

Collection letters

7. A licensee shall not permit a collection letter to be sent to any person unless,
 - (a) the letter is in relation to the affairs of the licensee's client;
 - (b) the letter is prepared by the licensee or by a non-licensee under the direct supervision of the licensee;
 - (c) if the letter is prepared by a non-licensee under the direct supervision of the licensee, the letter is reviewed and approved by the licensee prior to it being sent;
 - (d) the letter is on the licensee's business letterhead; and
 - (e) the letter is signed by the licensee.

PART II IV

OBLIGATIONS RESULTING FROM SUSPENSION

Interpretation

8. In this Part,
"existing client" means,
 - (a) a person who is a client of a suspended licensee when a suspension order is made against the licensee, or
 - (b) a person who becomes a client of the suspended licensee after the suspension order is made but before the suspension begins;

“former client” means a person who was a client of a suspended licensee before a suspension order was made against the licensee but who was not a client when the order was made;

“prospective client” means a person who seeks to retain a suspended licensee after the suspension order is made the licensee but before the suspension begins;

“suspended licensee” means a licensee who holds a Class L1 licence or a Class P1 licence and who is the subject of a suspension order;

“suspension order” means an order made under the Act suspending a licensee’s licence to practise law in Ontario as a barrister and solicitor or to provide legal services in Ontario, regardless of whether the suspension begins when the order is made or thereafter.

Notice requirements before suspension begins

9. (1) A suspended licensee shall before the suspension begins, but not later than the date on which the suspension begins,

- (a) notify every existing client, on whose matters the work will not be completed by the suspended licensee before the suspension begins, of the suspension order and that,
 - (i) the suspended licensee will be unable to complete the work,
 - (ii) the client will need to retain another licensee to complete the work, and
 - (iii) the suspended licensee, subject to any rights that the suspended licensee may have over the client’s file, will transfer the file to the licensee, if any, retained by the client to complete the work or will return the file to the client; and
- (b) notify every existing client and former client for whom the suspended licensee performs or has performed the work described in subsection 14 (1) of the name and contact information of the licensee to whom the suspended licensee has given possession of the client’s documents and files.

Compliance with subclauses (1) (a) (i) to (iii) not required

(2) A suspended licensee is not required to comply with the notice requirements mentioned in subclauses (1) (a) (i) to (iii) if the only work remaining to be completed on the client’s matter is work mentioned in section 12 or 13, but, in such a case, the suspended licensee shall, before the suspension begins, notify the client of the

name and contact information of the licensee retained by the suspended licensee to complete the work.

Notice requirements: during suspension

10. A suspended licensee shall, during the suspension,
 - (a) notify all persons who contact the suspended licensee's place of business of the suspension order; and
 - (b) notify any existing client or former client who contacts the suspended licensee's place of business of the name and contact information of another licensee who has been given possession of the clients' documents and files.

Notice requirements: prospective clients

11. A suspended licensee, at the time a prospective client seeks to retain the suspended licensee, shall notify the prospective client of the suspension order.

Work remaining on file: final report to client

12. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is a final report to the client, the suspended licensee shall, before the suspension begins, retain another licensee, who is authorized to do so, to review the client's file and to complete and send the final report to the client.

Work remaining on file: fulfilment of undertakings

13. If, on the date the suspension begins, the only work remaining for a suspended licensee to complete on a client's matter is the fulfillment of one or more undertakings given by the suspended licensee, the suspended licensee shall retain another licensee or person, who is authorized to do so, to take all steps necessary to fulfill the undertakings.

Additional requirements: preparation of will, power of attorney, corporate records

14. (1) This section applies to a suspended licensee who performs or has performed any of the following work for a client:
 1. Preparation of a will.
 2. Preparation of a power of attorney.

3. Preparation of, or preparation and continued maintenance of, corporate records.

Requirement re original documents

- (2) A suspended licensee shall, before the suspension begins,
 - (a) return to the client all original documents; or
 - (b) transfer the client's file, including all original documents, to another licensee who is authorized to perform any requisite work.

Real estate law: direction re Teranet access disk

15. A suspended licensee who has access to the Teranet system shall, on or before the date the suspension begins, complete and file with the Society, in a form provided by the Society, a direction authorizing the Society to take all steps necessary to cancel the suspended licensee's Teranet access disk for the period of the suspension.

Return of photo identification card

16. A suspended licensee shall, on or before the date the suspension begins, return to the Society any photo identification card issued to her or him by the Society.

Students

17. A suspended licensee, who has accepted a person into service under articles of clerkship where the period of service includes any or all of the period of the suspension, shall, before the suspension begins,
 - (a) notify the person of the suspension order and that the suspended licensee will not be able to retain the person in service under articles of clerkship after the suspension begins;
 - (b) arrange for another licensee, who is authorized and approved by the Society to do so, to accept the person into service under articles of clerkship after the suspension begins; and
 - (c) arrange with the Society for the person's service under articles of clerkship to be transferred from the suspended licensee to the other licensee effective the date on which the suspension begins.

Report to Society on compliance

18. A suspended licensee shall, not later than thirty days after the suspension begins, complete and file with the Society, in a form provided by the Society, a report confirming and providing details of the suspended licensee's compliance with this Part.

Permission to be exempt from requirement

19. A suspended licensee may apply in writing to the Society for an exemption from or a modification of a requirement mentioned in this Part, and the Society may exempt the suspended licensee from or modify the requirement, subject to such terms and conditions as the Society may impose.

PART III

CLIENT IDENTIFICATION AND VERIFICATION

Definitions

20. In this Part,

“financial institution” means,

- (a) a bank to which the *Bank Act* (Canada) applies,
- (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,
- (f) a loan or trust corporation regulated by an Act of a province or territory of Canada, or
- (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;

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

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

“private company” means a company the constating documents of which,

- (a) restrict the right to transfer shares,
- (b) limit the number of its shareholders, exclusive of persons who are in the employ of the company, to 50, two or more persons holding one or more shares jointly being counted as a single shareholder, and
- (c) prohibit any invitation to the public to subscribe for its shares or securities;

“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 and includes a city, town, village, metropolitan or regional municipality, township, district, county, rural municipality or other incorporated municipal body or an agent of any of them, or
- (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 (Ontario)* or 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 under the *Excise Tax Act (Canada)* or an agent of the organization,
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

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) and (3), 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), and
 - (ii) comply with the 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 who has already complied with the client identification and verification requirements set out in section 23; or
 - (c) the licensee is engaged in the activities described in subsection (1) for a client referred to the licensee by another licensee who has already complied with the client identification and verification requirements set out in section 23.

Exemptions re certain funds

- (3) A licensee is not required to comply with the client verification requirements set out in subsection 23 (4) in respect of funds,
- (a) received from a financial institution, public body or company that is not a private company;
 - (b) paid to a financial institution or public body;
 - (c) paid to a client that is a company that is not a private company;

- (d) paid to another licensee in trust, on the direction of a client;
- (e) received from the trust account of another licensee;
- (f) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (g) paid pursuant to a court order or to pay a fine or penalty;
- (h) paid as a settlement in any legal or administrative proceedings; or
- (i) received for professional fees, disbursements, expenses or bail.

Client identification

23. (l) 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, 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 company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable.
7. If the client is an organization, the name, position and contact information for those individuals 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 beneficiary or a principal, information about the beneficiary or principal 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 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:

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.

Same, previous identification

(3) A licensee complies with the identification requirements set out in subsection (2) if the licensee 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, where appropriate, the third party beneficiary or principal, using what the licensee reasonably considers to be reliable, independent source documents, data or information.

Timing of verification, individuals

(5) A licensee shall verify the identity of an individual mentioned in subsection (1) upon 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 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 beneficiary or principal 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 beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, 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 beneficiary or principal 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 client is an individual who is not instructing the licensee 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 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.

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

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

(11) A licensee complies with the verification requirements set out in subsection (4) if another person acting on behalf of the licensee complies with those requirements provided that, the licensee and the other person, prior to the person acting

on behalf of the licensee, enter into a written agreement specifying the steps that the person will be taking on behalf on 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 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.

Copies 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 a person 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.

Criminal activity, duty to withdraw at time of taking information

24. If a licensee, in the course of complying with the client information and verification requirements set out in section 23, reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or 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 June 30, 2008.

PART IV

WITHDRAWAL OF SERVICES

Application of Part

26. This Part applies to all matters in respect of which a licensee is retained to provide her or his professional services to a client, including matters in respect of which the licensee was retained before this Part came into force and matters in respect of which the licensee is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw after being retained

27. If a licensee while retained by a client reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the licensee shall,

- (a) immediately cease to and not further engage in any activities that would assist the client in dishonesty, fraud, crime or 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.

Federation of Law Societies of Canada

Model Rule on Client Identification and Verification Requirements

Definitions

1. In this Rule,

“financial institution” means

- (a) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada or a bank to which the *Bank Act* applies,
- (b) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial Act,
- (c) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (d) a company to which the *Trust and Loan Companies Act* (Canada) applies,
- (e) a trust company or loan company regulated by a provincial Act, or
- (f) a department or agent of Her Majesty in right of Canada or of a province where the department or agent accepts deposit liabilities in the course of providing financial services to the public;

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

“lawyer” means, in the Province of Quebec, an advocate or a notary and, in any other province, a barrister or solicitor;

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

“private company” means a company whose governing statute or constating documents provides that:

- (a) the right to transfer its shares is restricted,
- (b) the number of its shareholders, exclusive of persons who are in the employ of the company, is limited to 50, two or more persons holding one or more shares jointly being counted as a single shareholder; and
- (c) any invitation to the public to subscribe for its shares or securities is prohibited.

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body or 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* (Ontario) [or equivalent legislation] or 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 under the *Excise Tax Act* (Canada) or an agent of the organization, or
- (e) a body incorporated by or under an Act of a province or territory of Canada for a public purpose.

Client Identity

- 2. (1) Subject to subsection (2), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule.
 - (2) Sections 3 through 9 do not apply to
 - (a) a lawyer when he or she provides legal services and engages in or gives instructions in respect of any of the activities described in section 4 on behalf of his or her employer, or
 - (b) a lawyer
 - (i) who is engaged as an agent by the lawyer for a client to provide legal services to the client, or
 - (ii) to whom a matter for the provision of legal services is referred by the lawyer for a client,

when the client's lawyer has complied with sections 3 through 9.

3. A lawyer who is retained by a client as described in section 2(1) shall obtain and record the following information:
 - (a) the client's full name,
 - (b) the client's business address and business telephone number, if applicable,
 - (c) if the client is an individual, the client's home address and home telephone number,
 - (d) if the client is an organization, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
 - (e) if the client is an individual, the client's occupation or occupations,
 - (f) if the client is an organization,
 - (i) other than a financial institution, public body or company that is not a private company, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
 - (iii) the name, position and contact information for those individuals authorized to give instructions with respect to the matter for which the lawyer is retained,
- (3) if the client is acting for or representing a third party beneficiary or a principal, information about the beneficiary or principal as set out in paragraphs (a) to (f) as applicable.

Client Identity and Verification

4. Section 6 applies where a lawyer engages on behalf of a client in or gives instructions on behalf of a client in respect of the receiving, paying or transferring of funds.

Exemptions re: certain funds

5. Section 6 does not apply in respect of funds,

- (a) paid by a financial institution, public body or a company that is not a private company;
- (b) paid to
 - (i) a financial institution,
 - i. a public body, or
 - ii. a client that is a company that is not a private company;
- (c) paid to another lawyer in trust, on the direction of the client;
- (d) received by a lawyer from the trust account of another lawyer;
- (e) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
- (f) paid pursuant to a court order or to pay a fine or penalty;
- (g) paid as a settlement of any legal or administrative proceedings; or
- (h) received for professional fees, disbursements, expenses or bail.

6. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, including non-face-to-face transactions, the lawyer shall take reasonable steps to verify the identity of the client and, where appropriate, the third party beneficiary or principal, using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

Examples of independent source documents

- (2) For the purposes of subsection (1), independent source documents may include:
- (a) if the client or third party beneficiary or principal is an individual, valid original government issued identification, including a driver's licence, birth certificate, provincial or territorial health insurance card [if such use of the card is not prohibited by the applicable provincial or territorial law], passport or similar record;
 - (b) if the client or third party beneficiary or principal is an organization such as a corporation or society that is created pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, 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; and
- (c) if the client or third party beneficiary or principal 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.

Identifying Directors, Shareholders and Owners

- (3) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 4 for a client that is an organization referred to in subsection (2)(b) or (c), the lawyer shall make reasonable efforts to obtain, and if obtained, record,
- (a) the name and occupation of all directors of the organization, other than an organization that is a securities dealer, and
 - (b) the name, address and occupation of all persons who own 25 per cent or more of the organization or of the shares of the organization.

Client Identity and Verification in Non-Face-to-Face Transactions

(4) When a lawyer engages in or gives instructions in respect of any of the activities in section 4 for a client who is an individual who is not physically present before the lawyer but is present elsewhere in Canada, the lawyer shall verify the client's identity by obtaining an attestation from a commissioner of oaths in Canada, or a guarantor in Canada, that the commissioner or guarantor has seen one of the documents referred to in subsection (2)(a).

(5) For the purpose of subsection (4), an attestation shall be produced on a legible photocopy of the document and shall include

- (a) the name, profession 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 identifying document provided by the client.

(6) For the purpose of subsection (4), a guarantor must be a person employed in one of the following professions in Canada:

- (a) dentist;
- (b) medical doctor;
- (c) chiropractor;
- (d) judge;
- (e) magistrate;
- (f) lawyer;
- (g) notary (in Quebec);
- (h) notary public;
- (i) optometrist;
- (j) pharmacist;
- (k) professional accountant (APA [Accredited Public Accountant], CA [Chartered Accountant], CGA [Certified General Accountant], CMA [Certified Management Accountant], PA [Public Accountant] or RPA [Registered Public Accountant]);
- (l) professional engineer (P.Eng. [Professional Engineer, in a province other than Quebec] or Eng. [Engineer, in Quebec]); or
- (m) veterinarian.

Use of Agent

(7) For the purpose of subsection (2)(a), a lawyer may, and in the case of a non-face-to-face transaction involving a client who is not present in Canada shall, rely on an agent to obtain the information, which may include, where applicable, an attestation described in this section, to verify the client's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose.

(8) A lawyer who enters into an agreement or arrangement referred to in subsection (7) shall obtain from the agent the information obtained by the agent under that agreement or arrangement.

Timing of Verification for Individuals

(9) A lawyer shall verify the identity of

- (a) a client who is an individual, and
- (b) the individual or individuals authorized to give instructions on behalf of an organization with respect to the matter for which the lawyer is retained,

upon engaging in or giving instructions in respect of any of the activities described in section 4.

(10) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity if the lawyer recognizes that person.

Timing of Verification for Organizations

(11) A lawyer shall verify the identity of a client that is an organization within 60 days of engaging in or giving instructions in respect of any of the activities described in section 4.

(12) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection 6(3), the lawyer is not required to subsequently verify that identity or obtain that information.

Record keeping and retention

7. (1) A lawyer shall obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of section 6(1).

(2) The documents referred to in subsection (1) may be kept in a machine-readable or electronic form, if a paper copy can be readily produced from it.

(3) A lawyer shall retain a record of the information and any documents obtained for the purposes of sections 3 and 6(3) and copies of all documents received for the purposes of section 6(1) for the longer of

- (a) the duration of the lawyer 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 lawyer was retained.

Application

8. Sections 2 through 7 of this Rule do not apply to matters in respect of which a lawyer was retained before this Rule comes into force but they do apply to all matters for which he or she is retained after that time regardless of whether the client is a new or existing client.

Criminal activity, duty to withdraw at time of taking information

9. (1) If in the course of obtaining the information and taking the steps required in sections 3 and 6(1) or (3), a lawyer reasonably suspects that he or she is or would be assisting a client in dishonesty, fraud, crime or illegal conduct, the lawyer must withdraw from representation of the client.

Application

(2) This section applies to all matters, including new matters for existing clients, for which a lawyer is retained after this Rule comes into force.

Criminal activity, duty to withdraw after being retained

10. (1) If while retained by a client, a lawyer reasonably suspects that he or she is or would be assisting the client in dishonesty, fraud, crime or illegal conduct, the lawyer must withdraw from representation of the client.

Application

(2) This section applies to all matters for which a lawyer was retained before this Rule comes into force and to all matters for which he or she is retained after that time.

DESCRIPTION OF THE FEDERATION OF LAW SOCIETIES OF CANADA MODEL RULE'S REQUIREMENTS

1. Application

The Model Rule applies whenever a lawyer provides legal services to a client. The client identification requirements call for basic identification information about individual or organizational clients in every retainer. The identify *verification* requirements are triggered where the lawyer receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client.

Lawyers are exempt from the requirements where the lawyer provides the legal services on behalf of his or her employer. Lawyers are also exempt where they are engaged as an agent by a lawyer for a client or are referred a matter from a lawyer for a client when the client's lawyer has complied with the Rule.

With respect to the requirements that apply when a lawyer receives, pays or transfers funds, the lawyer is exempt from these requirements when the funds are

- paid by a financial institution, public body, or a public company,
- paid to financial institution,
- paid to a public body,
- paid to a client that is a public company,
- paid to another lawyer in trust, on the direction of the client,
- received by a lawyer from the trust account of another lawyer,
- received from a peace officer, law enforcement agency or other public official acting in their official capacity,
- paid pursuant to a court order or to pay a fine or penalty,
- paid as a settlement of any legal or administrative proceedings, or
- received for professional fees, disbursements, expenses or bail.

2. Client Identification Requirements

The identification requirements, applying to all retainers for legal services, require lawyers to obtain and record,

- the client's full name,
- the client's home or business address,
- the client's home or business telephone number,
- where the client is an individual, the client's occupation,
- where the client is an organization (other than a financial institution, public body or public corporation), the general nature of the type of business engaged in by the organization, where applicable,
- where the client is an organization, the individuals authorized to give instructions with respect to that organization, and
- where the client is acting for a third party beneficiary, necessary information about the beneficiary, such as that set out above.

3. Client Identity Verification Requirements

The requirements in the Rule oblige lawyers to obtain and maintain certain documents through which identity is ascertained. Examples of independent source documents that meet the requirements are set out in the Rule. For individuals, the documents include government-issued identification, such as a driver's license, birth certificate, provincial health card or passport or a similar record. For organizations, the Rule requires the incorporating documents of the organization, or a confirmation from a government registry as to the existence and name of the organization, including the name of its directors and officers, or a copy of the organization's constating document(s).

Lawyers must make reasonable efforts to obtain and if obtained, record, the name and occupation of all directors, and the name, address and occupation of all persons who own 25% or more of the organization. Because of the exemptions, this would only apply to private corporations.

For client identification and verification in non-face-to-face situations, when the client is situated elsewhere in Canada, the lawyer may obtain an attestation from a commissioner of oaths or guarantor in Canada that he or she has seen one of the documents that will verify the client's identity. A list of individuals who qualify to provide the attestation is included in the Rule. The lawyer may also use an agent with whom the lawyer has an agreement in writing for the purposes of identifying the client. If an individual client is not present in Canada, the lawyer *must* use the agent for the purposes of obtaining and verifying the client's identity, who may provide an attestation.

The Rule requires identity verification of individual clients at the time the lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds in relation to these clients. For organizational clients, the verification must occur within 60 days of these activities.

The Model Rule provides that "re-identification" is not required for clients on new matters, qualified by the need for the lawyer to recognize the individual client.

4. Record Keeping Requirements

The Rule requires lawyers to obtain and keep a copy of the information recorded for client identity and the documents obtained to verify the client's identity. The documents, which may be kept in machine-readable or electronic form such that paper copies can be readily produced, are to be kept for the duration of the relationship with the client and for as long as is necessary to fulfill the requirements of the retainer, but in no event less than six years.

5. When the Requirements in the Rule Apply

The Rule contains provisions about when the obligations in the Rule apply. The identification and verification requirements apply at the time the Rule is in force, in other words, on a going forward basis.

6. Withdrawal From Representation

The Rule requires a lawyer to withdraw from providing legal services when he or she reasonably suspects that the provision of the services would assist a client in criminal or illegal activity. The duty applies to new matters for existing clients after the Rule is in force if the suspicion arises during the identification and verification activities. The duty applies to all matters, before and after the Rule is in force, if the suspicion arises during the course of the retainer generally. These duties are similar to those in place in law societies' rules or codes of professional conduct.

7. Enforcement

As the Rule is to be the basis for a law society regulation to which lawyers would be subject as members of the profession in Canada, existing audit, review, investigation and disciplinary functions within each law society would apply. Breaches of the Rule, as implemented by law societies, would be dealt with as a matter of professional regulation.

LAWYERS' OBLIGATIONS UNDER NEW FEDERAL REGULATIONS ON CLIENT IDENTIFICATION AND VERIFICATION⁵

1. Client Identification and Verification

The new Regulations require a lawyer to identify a client whenever the lawyer receives \$3,000 or more in the course of the lawyer's business activities. Funds received from a public body or a publicly-traded company with minimum net assets of \$75 million and which is located in a country that is a member of the FATF are exempt. The new Regulations also exempt lawyers from the requirements when the funds are received by the lawyer from the trust account of another lawyer.

Individual clients must be identified by referring to a government-issued identification document (e.g. a birth certificate, driver's license, provincial health insurance card, passport or similar document). If the client is an organization, the lawyer must rely on identifying documents such as a certificate of corporate status, trust or partnership agreements and articles of association. The new Regulations require additional identification procedures where the client who is an individual is not physically present, and permit the identification to be done by an agent or mandatary. For such non-face-to-

⁵ The new regulations relevant to the legal profession include provisions from:

- the *Proceeds of Crime (Money Laundering) and Terrorist Financing Regulations*, Registration SOR/2002-184, May 9, 2002,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (2007-1)* Registration SOR/2007-122 June 7, 2007 (published in Part II of the *Canada Gazette*, June 27, 2007), which generally come into force on June 23, 2008,
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act (2007-2)* published in Part II of the *Canada Gazette* on December 26, 2007 as SOR/2007 – 293, December 13, 2007, and
- amendments to those Regulations made by *Regulations Amending Certain Regulations Made Under The Proceeds Of Crime (Money Laundering) And Terrorist Financing Act (2008-1)* published in Part II of the *Canada Gazette* on February 20, 2008 as SOR/2008-21, January 31, 2008.

face situations, the Regulations require combinations of two methods of identification set out in Schedule 7 (see Appendix 1). For example, an attestation by a commissioner of oaths in Canada about the identity of the person and reference to identifying information in a credit file on the person would suffice.

Information required to be obtained during the identification process includes:

- a. For a client who is an individual, the name, address and date of birth of the person;
- b. For a client that is a corporation, the corporate name and address and the name of its directors. “Reasonable efforts” must be made to obtain the occupation of its directors and the name, address and occupation of any person who owns or control 25% or more of the corporation;
- c. For a client that is an entity other than a corporation, confirmation of its existence. The same reasonable efforts must be made to obtain the name, address and occupation of any person who owns or control 25% or more of the entity.

The new Regulations require the lawyer to document the inability to obtain through the “reasonable efforts” the specified information in b. and c.

When confirming the existence of a not-for-profit organization, a lawyer must determine whether it is a registered charity or solicits charitable financial donations.

For corporations or other organizations, the verification (the existence of the organization) must be confirmed within 30 days of the transaction. Individual clients’ identity must be confirmed at the time of the transaction.

Under the new Regulations, a lawyer is not required to re-identify clients unless he or she has doubts about the veracity of the previously obtained client information.

2. Record Keeping

The new Regulations include very detailed record-keeping requirements. Various records, described below, must be kept for a period of five years.

A lawyer must keep a “receipt of funds record”, a defined term in the new Regulations, when he or she has received \$3000 or more, except when the funds are received from a financial institution or public body. While parts of this record may already exist within a law office, it must include the following information:

- a. name, address and birth date of the person providing the funds,
- b. if the client is a person, the nature of the person’s principal business or occupation,
- c. if the client is an organization, the address and nature of the organization’s principal business,
- d. date of the transaction,
- e. account number affected by the transaction,
- f. type of account,
- g. full name of the person or entity who holds the account,
- h. monetary currency of the transaction,
- i. purpose and details of the transaction,
- j. if cash is received, how the funds are received, and
- k. amount and currency of the funds received.

If the client is a corporation, a lawyer must also include with the receipt of funds record a copy of the part of the official corporate records that contains any provisions relating to the power to bind the corporation in respect of the transactions with the lawyer.

The new Regulations indicate that the receipt of funds record is to contain the information specified if the information is not readily obtainable from other records that the lawyer keeps under the Regulations.

The new Regulations exempt lawyers from this record keeping requirement when the funds are received by the lawyer from the trust account of another lawyer. In such cases the lawyer must keep a record of that fact and is not required to include in the receipt of funds record the number and type of the account affected by the transaction or the name of the person or organization who holds the account.

For identification of an individual, a lawyer must keep a record of the following information or keep the required document, as the case may be, which information relates to the methods required under the new Regulations for individual identity verification:

- a. for the birth certificate, driver's license, provincial health insurance card, passport or similar document, the type and reference number of the record and the place issued;
- b. with respect to the methods described in Schedule 7,
 - i. for the cleared cheque, the name of the financial entity and account number,
 - ii. for confirmation of the deposit account, the name of the financial entity, number of the account and the date of the confirmation,
 - iii. for the identification product, its name, the entity offering it, the search reference number and the date it was used to ascertain identity,
 - iv. for the credit file, the name of the company and date consulted,
 - v. for the attestation, the attestation.

For corporate identity, where the identifying document is in electronic form, a lawyer must keep a record that sets out the corporation's registration number, the type of record referred to and the source of the electronic version of the record (a similar record is required for other organizations). Where the above information has been ascertained by referring to a paper copy of a record, a lawyer must keep the record or a copy of it.

At the time the existence of an organization is confirmed, if the lawyer has obtained the information about direct or indirect ownership and control described above, he or she must record it. As discussed earlier, where the lawyer is unable to obtain the above information, he or she must to keep a record of the reasons the information could not be obtained.

Where the entity is a not-for-profit organization a lawyer must keep a record of whether it is a registered charity or solicits charitable financial donations.

The records required under the new Regulations must be kept in a form that can be provided to an authorized person within 30 days after a request is made to examine them under section 62 of the Act. Section 62 gives FINTRAC authority to examine records of those who are subject to the Regulations.⁶

Note on Sections 62 to 65.1 of the Act

These sections effectively authorize warrantless searches of law offices for the purpose of ensuring compliance with the Regulations. The sections are based on *Criminal Code* provisions that have been struck down as unconstitutional by the Supreme Court of Canada. As such, these sections do not comply with the stringent requirements established by the Court in *Lavallee, Rackel & Heintz v. Canada*.⁷ Bill C-25, amending legislation in respect of the Act, which received Royal Assent in December 2006, did not include amendments to sections 62 to 65 to address this issue despite the apparent

⁶ Section 62 of the Act reads:

62. (1) An authorized person may, from time to time, examine the records and inquire into the business and affairs of any person or entity referred to in section 5 for the purpose of ensuring compliance with Part 1, and for that purpose may

(a) at any reasonable time, enter any premises, other than a dwelling-house, in which the authorized person believes, on reasonable grounds, that there are records relevant to ensuring compliance with Part 1;

(b) use or cause to be used any computer system or data processing system in the premises to examine any data contained in or available to the system;

(c) reproduce any record, or cause it to be reproduced from the data, in the form of a printout or other intelligible output and remove the printout or other output for examination or copying; and

(d) use or cause to be used any copying equipment in the premises to make copies of any record.

Assistance to Centre

(2) The owner or person in charge of premises referred to in subsection (1) and every person found there shall give the authorized person all reasonable assistance to enable them to carry out their responsibilities and shall furnish them with any information with respect to the administration of Part 1 or the regulations under it that they may reasonably require.

⁷ *Lavallee, Rackel & Heintz v. Canada (Attorney General)*; *White, Ottenheimer & Baker v. Canada (Attorney General)*; *R. v. Fink*, [2002] 3 S.C.R. 209.

intention of the Department of Finance to do so. The following appeared in the Department's June 2005 consultation paper, referenced earlier:

6.17 Documents Protected by Solicitor-Client Privilege

Reference: PCMLTFA, sections 62 to 65

Amendment

Amend the compliance provisions that allow FINTRAC to examine documents to bring the PCMLTFA into conformity with the principles set out by the Supreme Court of Canada in its decision in the case of *Lavallee, Rackel & Heintz* in respect of solicitor-client privilege.

Explanation

In a 2002 decision in the case of *Lavallee, Rackel & Heintz*, the Supreme Court of Canada set out principles that should be followed to protect solicitor-client privilege when the police seize documents from law offices under warrants. The proposed amendments would ensure that the compliance provisions under the PCMLTFA allowing FINTRAC to examine documents are consistent with these principles.

The Federation of Law Societies of Canada, in its responding to the consultation paper in September 2005, affirmed the need to address this issue:

The Federation supports the proposal in section 6.17 of the Consultation Paper to amend sections 62 to 65 of the Act to conform with the principles established by the Supreme Court of Canada on seizure of solicitor and client privileged documents. These sections are modeled closely on those in the *Criminal Code*, which have been struck down as unconstitutional by the Supreme Court. The Court, in confirming that privilege does not come into being by an assertion of a privilege claim, but exists independently, found that by the operation of s. 488.1 of the *Criminal Code*, the "constitutionally protected right" of privilege could be violated by the mere failure of counsel to act, without instruction from or communication with the client. The Federation agrees that the Act must be amended to ensure that solicitor and client privilege is protected.

The application of sections 62 to 65.1 as currently framed in the Act to the legal profession would create serious problems for the protection of solicitor and client privilege and confidentiality.

3. Compliance

The new Regulations require lawyers or law firms to establish detailed compliance and review programs. The following is an overview of the requirements.

A lawyer or law practice must implement a program to ensure compliance with the new Regulations by:

- a. designating a person in the law practice – who, where the program is being implemented by a person, may be that person (e.g. a sole practitioner) – who is to be responsible for the implementation of the program;
- b. developing and applying written compliance policies and procedures that are approved by the law practice’s managing partner, as the case may be, and are kept up to date;
- c. assessing and documenting, in a manner that is appropriate for a law practice, the risk of money laundering or terrorist financing, taking into consideration
 - i. the clients and the business relationships of the law practice,
 - ii. the services and service delivery methods of the law practice,
 - iii. the geographic location of the activities of the lawyer, and
 - iv. any other relevant factor;
- d. if the law practice has employees, agents or other persons authorized to act on its behalf, developing and maintaining a written ongoing compliance training program for those employees, agents or persons;
- e. instituting and documenting a review of the policies and procedures, the risk assessment and the training program for the purpose of testing their effectiveness, which review is required to be carried out every two years by an internal or external auditor of law practice, or by the law practice itself if it does not have such an auditor.

For the purposes of the compliance program, the law practice must report the following in written form to the managing partner, as the case may be, 30 days after the assessment described above:

- a. the findings of the review referred to in e above;

- b. any updates to the policies and procedures made within the reporting period; and
- c. the status of the implementation of those policies and procedures and their updates.

If a law practice considers the risk of money laundering or terrorist financing in the course of its activities to be high, the lawyer or law practice must develop and apply written policies and procedures for taking reasonable measures to keep client identification information up to date and mitigating the risks.

AMENDMENTS TO BY-LAW 8 RESPECTING LICENSEE INFORMATION REQUIREMENTS AND THE LAW SOCIETY REGISTER

Motion

43. That Convocation amend By-Law 8 (Reporting and Filing Requirements) by adding sections 3.1 and 3.2 and adding Part III, as set out at Appendix 5.
The formal motion to amend the By-law is at Tab 3.

Introduction

44. Licensees are required to complete the Member's Annual Report (MAR) by March 31 of each year.⁸ Among other things, the MAR requires lawyers to provide basic contact and practice/employment information.⁹ This information is required to maintain the Law Society's record for each lawyer, for a number of regulatory purposes. The information, however, is only obtained once a year through the filing of the MAR, and is information as of December 31 in the applicable year.
45. For the reasons explained below, there is need to maintain up-to-date information on licensees. The Society requests licensees to report changes in contact information and makes a Change of Information Form available to them. While the majority of lawyers voluntarily advise the Society of changes in such things as their status, office location, home address and contact information, there is no requirement that they do so apart from the MAR. Moreover, some lawyers fail to file the MAR, leaving a gap in the Society's information about those lawyers, and the Law Society has no regulatory requirement upon which it can rely to obtain the information.

⁸ A form based on the MAR will be required to be filed by paralegal licensees once licenses are issued.

⁹ This includes the following:
Member Name, Firm Name, Street Address, City, Province, Postal Code, Membership Number, Year of Call, E-mail address, Status

46. The Committee, together with the Paralegal Standing Committee, is proposing that By-Law 8 be amended to implement requirements that licensees provide necessary information to the Law Society when requested to do so and report changes in licensee information to the Law Society as they occur. Other proposed amendments to By-Law 8 deal with the Law Society register, prescribed under the *Law Society Act*, and the public nature of information contained in the register.

Convocation's First Consideration of the Policy

47. In March 2007, the Committee recommended to Convocation that it approve the policy for a by-law that would require a licensee to provide information to the Society on an on-going basis to keep the licensee's record with the Society current. The by-law would codify what many lawyers already do to provide the Society with relevant information and provide the Society with a regulatory foundation upon which requests for information could be made. A draft of the by-law was not prepared at that time. The Committee's report outlined the type of information the new by-law would require licensees to provide to the Society, including changes in information, and time periods within which certain information must be provided to the Society.
48. Convocation agreed in principle with this approach and with the reasons set out in the Committee's report for adopting a mandatory requirement, as follows:
- a. If a licensee is the subject of a complaint, current contact information is necessary to investigate the complaint, in particular, to request a response from the lawyer. Without current information, an investigation can be stalled, which ultimately affects the Society's ability to address in a timely way an allegation of misconduct;
 - b. If a conduct, competence or capacity matter proceeds to a hearing level, an address is required for service on the licensee. A lack of current contact information can make service more difficult and extend the time required to deal with the matter;

- c. If a licensee's licence to practise is suspended or restricted by an order or undertaking, a lack of current contact information can impede the ability of the Society's Monitoring & Enforcement Department to monitor compliance with the order or undertaking;
 - d. If allegations are raised that a licensee has abandoned his or her practice or other issues arise that require the services of the Society's Trustee Services Department, a lack of current contact information can impede the ability of the Department to respond in a timely way to address potential risks to the public;
 - e. Changes in status will impact a lawyer's ability to use Teranet, the electronic land registry system, which relies on the Law Society's current member list (for practising status) for certain requirements under the system¹⁰. A lack of current contact information may impede the Society's timely notification to the lawyer of a suspension, and as a result the lawyer's clients may be prejudiced;
 - f. The Society's Administrative Compliances Processes Department relies on the currency of the licensee database to send notices to licensees for a number of requirements under the By-Laws (including filings for multi-discipline practices, professional corporations and affiliations). Inaccurate records may result in the inability to contact licensees, which affects the integrity of these regulatory processes and the public protections they provide.
49. The motion before March 2007 Convocation was as follows: "That Convocation approve the policy for a new by-law that would require members of the Law Society to provide current contact and other information to the Society."

¹⁰ In the electronic land registry system, a "compliance with law statement" may only be made by a person who is entitled to practice law in Ontario as a solicitor. Therefore a change in the lawyer's status affects the lawyer's ability to register real estate documents containing compliance with law statements. For example, lawyers who are suspended or disbarred will be precluded from making compliance with law statements. Suspension includes a lawyer suspended for "administrative" reasons such as for the failure to pay Law Society fees or LAWPRO levies or for the failure to file Law Society or LAWPRO forms. The Law Society provides timely updates to Teranet of changes in the status of lawyers.

Convocation decided to defer its decision on the new by-law until a draft of the by-law was available for review.¹¹

Proposed By-Law Amendments

50. The proposal is that amendments with respect to these requirements be made to By-Law 8 (Reporting and Filing Requirements). A redline version of the By-Law showing the proposed amendments is at **Appendix 6**.

51. The proposed amendments were reviewed and approved by both the Committee and the Paralegal Standing Committee.

52. Authority to adopt this type of regulation exists under the *Law Society Act*. The Act includes by-law-making authority for the Society to require certain information from a licensee:

62. (0.1) Convocation may make by-laws,

...

8. requiring licensees to *register an address* with the Society and to notify the Society of any changes in the address;

9. requiring licensees or any class of licensees, or authorizing the Society to require licensees or any class of licensees, to *provide the Society with information* or to file certificates, reports or other documents with the Society, relating to the Society's functions under this Act;

(emphasis added).

Overview of the Amendments for Licensee Information

53. The proposed By-Law amendments incorporate two requirements for licensee information.

¹¹ The deferral in part was prompted by the concern of some benchers about a lack of clarity around what information gathered under authority of the by-law would be public or not public.

54. New Section 3.1 of By-Law 8 requires licensees to provide certain information to the Law Society *upon request*. This includes personal identification information, personal contact information, business contact information and information with respect to the licensee's professional business. The information is to be provided within 10 days of the written request, but an extension of time may be granted. The authority to request the information is in addition to but does not limit the Society's authority to otherwise request the information (e.g. through the Member's Annual Report).
55. New Section 3.2 requires licensees to report changes to certain information, similar to the above, provided to the Law Society either before or after the effective date of the By-Law amendments.

The Law Society Register

56. The amendments to By-Law 8 include new Part III, which sets out the content of the Law Society's register and the manner in which the information may be made available to the public. The legislative authority for the Register is found in s. 27.1 of the *Law Society Act*:

Register

27.1 (1) The Society shall establish and maintain a register of persons who have been issued licences.

Contents of register

(2) Subject to any by-law respecting the removal of information from the register, the register shall contain the following information:

1. The name of each licensee.
2. The class of licence issued to each licensee.
3. For each licensee, all terms, conditions, limitations and restrictions that are imposed on the licensee under this Act, other than terms, conditions, limitations and restrictions that are imposed by the by-laws on all licences of that class.

4. An indication of every suspension, revocation, abeyance or surrender of a licence.
5. Any other information required by the by-laws.

Availability to public

(3) The Society shall make the register available for public inspection in accordance with the by-laws.

57. In light of s. 27.1(3), the Committees determined that amendments should be made to deal with the obligation to make the register available for public inspection.

PROPOSED AMENDMENTS TO BY-LAW 8

INFORMATION: GENERAL

Requirement to provide various information

3.1 (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,
 - v. information with respect to the licensee's storage of wills and powers of attorney, and
 - vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Interpretation: personal and business contact information

- (2) For the purposes of subsection (1),
 - (a) personal contact information includes,

- (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
- (b) business contact information includes,
- (i) business address,
 - (ii) business telephone number,
 - (iii) business facsimile number, and
 - (iv) business e-mail address.

Notice of requirement

(3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

(4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

(5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

(6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to

require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

REPORTING CHANGES

Requirement to report changes

3.2 (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario.
5. Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies into which the licensee pays or paid money received in trust for a client.

Interpretation: personal and business contact information

- (2) For the purposes of subsection (1),
 - (a) personal contact information includes,
 - (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
 - (b) business contact information includes,
 - (i) business address,
 - (ii) business telephone number,

- (iii) business facsimile number, and
- (iv) business e-mail address.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

PART III
REGISTER

Contents of register

9. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:

1. The assumed names, if any, of each licensee.
2. An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.
3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
 - i. where and in what capacity the licensee practises law or provides legal services, and
 - ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.
4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,
 - i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
 - ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.
5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.

2. By publishing a print directory of licensees containing some or all of the information contained in the register.
3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

REDLINE VERSION OF BY-LAW 8 WITH PROPOSED AMENDMENTS

BY-LAW 8

Made: May 1, 2007
Amended: June 28, 2007

REPORTING AND FILING REQUIREMENTS

PART I

REPORTING REQUIREMENTS

FISCAL YEAR

Notice of fiscal year

1. Every licensee who holds a Class L1 licence and engages in the private practice of law in Ontario shall inform the Society in writing of the termination date of his or her fiscal year, and shall file with the Society written notice of any change in the fiscal year within one month after the change is made.

BANKRUPTCY OR INSOLVENCY OF LICENSEE

Notice of bankruptcy or insolvency

2. A licensee shall immediately notify the Society whenever any of the following events occurs:

1. The licensee receives notice of or is served with a petition for a receiving order against him or her filed in court under subsection 43 (1) of the *Bankruptcy and Insolvency Act* (Canada).
2. The licensee makes an assignment of all his or her property for the general benefit of his or her creditors under section 49 of the *Bankruptcy and Insolvency Act* (Canada).

OFFENCES

Requirement to report offences: licensees

3. (1) Every licensee shall inform the Society in writing of,

- (a) a charge that the licensee committed,

- (i) an indictable offence under the *Criminal Code* (Canada),
 - (ii) an offence under the *Controlled Drugs and Substances Act* (Canada),
 - (iii) an offence under the *Income Tax Act* (Canada) or under an Act of the legislature of a province or territory of Canada in respect of the income tax law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee,
 - (iv) an offence under an Act of the legislature of a province or territory of Canada in respect of the securities law of the province or territory, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee, or
 - (v) an offence under another Act of Parliament, or under another Act of the legislature of a province or territory of Canada, where the charge alleges, explicitly or implicitly, dishonesty on the part of the licensee or relates in any way to the professional business of the licensee; and
- (b) the disposition of a charge mentioned in clause (a).

Requirement to report: private prosecution

(2) Despite subsection (1), a licensee is only required to inform the Society of a charge contained in an information laid under section 504 of the *Criminal Code* (Canada), other than an information referred to in subsection 507 (1) of the *Criminal Code* (Canada), and of the disposition of the charge, if the charge results in a finding of guilt or a conviction.

Time of report

(3) A licensee shall report a charge as soon as reasonably practicable after he or she receives notice of the charge and shall report the disposition of a charge as soon as reasonably practicable after he or she receives notice of the disposition.

Same

(4) In the circumstances mentioned in subsection (2), a licensee shall report a charge and the disposition of the charge as soon as reasonably practicable after he or she receives notice of the disposition.

Interpretation: “indictable offence”

(5) In this section, “indictable offence” excludes an offence for which an offender is punishable only by summary conviction but includes,

- (a) an offence for which an offender may be prosecuted only by indictment; and
- (b) an offence for which an offender may be prosecuted by indictment or is punishable by summary conviction, at the instance of the prosecution.

INFORMATION: GENERAL

Requirement to provide various information

3.1 (1) The Society may require a licensee to provide to the Society the following information:

1. Personal identification information, including the licensee's legal and assumed names.
2. Personal contact information.
3. Business contact information.
4. Information with respect to the licensee's professional business, including,
 - i. information about whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario,
 - ii. information with respect to where and in what capacity the licensee is practising law or providing legal services,
 - iii. information with respect to the licensee's handling of money and other property,
 - iv. information with respect to the licensee's storage of client files,
 - v. information with respect to the licensee's storage of wills and powers of attorney, and
 - vi. information with respect to the licensee's storage of corporate records, including minute books and seals.

Interpretation: personal and business contact information

(2) For the purposes of subsection (1),

(a) personal contact information includes,

- _____ (i) home address,
- _____ (ii) home telephone number,
- _____ (iii) home facsimile number, and
- _____ (iv) home e-mail address; and
- _____ (b) business contact information includes,
 - _____ (i) business address,
 - _____ (ii) business telephone number,
 - _____ (iii) business facsimile number, and
 - _____ (iv) business e-mail address.

Notice of requirement

_____ (3) The Society shall notify a licensee in writing of the requirement to provide information under subsection (1) and shall send to the licensee a detailed list of the information to be provided by him or her.

Time for providing information

_____ (4) Subject to subsection (5), the licensee shall provide to the Society the specific information required of him or her not later than ten days after the date specified on the notice of the requirement to provide information.

Extension of time for providing information

_____ (5) On the request of the licensee, the Society may extend the time within which the licensee is required to provide to the Society the specific information required of him or her.

Request for extension of time

_____ (6) A request to the Society to extend time under subsection (5) shall be made by the licensee in writing and by not later than the day by which the licensee is required under subsection (4) to provide information to the Society.

Additional authority to provide information

(7) The Society's authority to require a licensee to provide information contained in this section is in addition to, and does not limit, the Society's authority to require a licensee to provide information contained elsewhere in this By-Law, in any other by-law or in the Act.

REPORTING CHANGES

Requirement to report changes

3.2 (1) A licensee shall notify the Society in writing immediately after any change in the following information, previously provided by the licensee to the Society either before or after the coming into force of this section:

1. The licensee's legal and assumed names.
2. The licensee's personal contact information.
3. The licensee's business contact information.
4. Information with respect to whether the licensee is practising law in Ontario as a barrister and solicitor or providing legal services in Ontario.
5. Information with respect to the location and account number of any account at a chartered bank, provincial savings office, credit union or a league to which the *Credit Unions and Caisses Populaires Act, 1994* applies into which the licensee pays or paid money received in trust for a client.

Interpretation: personal and business contact information

- (2) For the purposes of subsection (1),
- (a) personal contact information includes,
- (i) home address,
 - (ii) home telephone number,
 - (iii) home facsimile number, and
 - (iv) home e-mail address; and
- (b) business contact information includes,

- (i) business address,
- (ii) business telephone number,
- (iii) business facsimile number, and
- (iv) business e-mail address.

Information required

(3) The notice required under subsection (1) shall include details of the change and the effective date of the change.

Documents, explanations

(4) The licensee shall provide to the Society such documents and explanations with respect to any change in the information mentioned in subsection (1) as the Society may require.

PART II

FILING REQUIREMENTS

ANNUAL REPORT

Requirement to submit annual report

4. (1) Every licensee who holds a Class L1 licence shall submit a report to the Society, by March 31 of each year, in respect of,

- (a) the licensee's professional business during the preceding year; and
- (b) the licensee's other activities during the preceding year related to the licensee's practice of law.

Annual Report

(2) The report required under subsection (1) shall be in a form provided by the Society.

Exemption from requirement to submit annual report

(3) The following licensees may apply to the Society for an exemption from the requirement to submit a report under subsection (1):

1. A licensee who is over sixty-five years of age and who,
 - i. does not practise law in Ontario,
 - ii. is not an estate trustee,
 - iii. is not a trustee of an *inter vivos* trust; and
 - iv. does not act as an attorney under a power of attorney for property given by a client or former client.
2. A licensee who is incapacitated within the meaning of the Act.

Application by licensee's representative

(4) The Society may permit any person on behalf of a licensee to make an application under subsection (3).

Application form

(5) An application under subsection (3) shall be in a form provided by the Society.

Documents and explanations

(6) For the purposes of assisting the Society to consider an application under subsection (3), the licensee or the person applying on behalf of the licensee shall provide to the Society such documents and explanations as the may be required.

Consideration of application

(7) The Society shall consider every application made under subsection (3) and if satisfied that the licensee is eligible for an exemption under paragraph 1 or 2 of subsection (3), the Society shall approve the application.

Duration of exemption

(8) A licensee whose application is approved is exempt from the requirement to submit a report under subsection (1) in respect of the year in which the application is approved and in respect of every year thereafter if the licensee remains eligible for the exemption throughout the entire year.

Period of default

5. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to complete or file a report required under section 4 is 120 days after the day the report is required to be submitted.

Reinstatement of licence

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to complete or file a report required under section 4, for the purpose of subsection 47 (2) of the Act, the licensee shall complete and file the report in a form provided by the Society.

Requirement to submit public accountant's report

6. (1) The Society may require any licensee who is required to submit a report under subsection 4 (1) to submit, in addition to the report required under that subsection, a report of a public accountant relating to the matters in respect of which the licensee is required to submit a report to the Society under subsection 4 (1).

Contents of report and time for filing

(2) The Society shall specify the matters to be included in the report and the time within which it must be submitted to the Society.

Licensee's obligation to provide access to files, etc.

(3) For the purpose of permitting the public accountant to complete the report, the licensee shall,

- (a) grant to the public accountant full access, without restriction, to all files maintained by the licensee;
- (b) produce to the public accountant all financial records and other evidence and documents which the public accountant may require; and
- (c) provide to the public accountant such explanations as the public accountant may require.

Authority to confirm independently particulars of transactions

(4) For the purpose of permitting the public accountant to complete the report, the public accountant may confirm independently the particulars of any transaction recorded in the files.

Cost

(5) The cost of preparing the report required under subsection (1), including the cost of retaining a public accountant, shall be paid for by the licensee.

Public accountant's duty of confidentiality

(6) When retaining a public accountant to complete a report required under this section, a licensee shall ensure that the public accountant is bound not to disclose any

information that comes to his or her knowledge as a result of activities undertaken to complete the report, but the public accountant shall not be prohibited from disclosing information to the Society as required under this Part.

Period of default

7. (1) For the purpose of clause 47 (1) (a) of the Act, the period of default for failure to file a report of a public accountant in accordance with section 6 is 60 days after the day the report is required to be submitted.

Reinstatement of licensee

(2) If a licensee's licence has been suspended under clause 47 (1) (a) of the Act for failure to file a report of a public accountant in accordance with section 6, for the purpose of subsection 47 (2) of the Act, the licensee shall file the report.

Failure to submit public accountant's report: investigation

8. (1) If a licensee fails to submit the report of a public accountant in accordance with section 4, the Society may require an investigation of the licensee's financial records to be made by a person designated by it, who need not be a public accountant, for the purpose of obtaining the information that would have been provided in the report.

Investigation: application of subs. 6 (3) and (4)

(2) Subsections 6 (3) and (4) apply with necessary modifications to the investigation under this section.

Confidentiality

(3) A person designated to investigate a licensee's financial records under this section shall not disclose any information that comes to his or her knowledge as a result of the investigation except as required in connection with the administration of the Act or the by-laws.

Cost

(3) The cost of the investigation under this section shall be paid for by the licensee.

PART III
REGISTER

Contents of register

9. (1) In addition to the information mentioned in subsection 27.1 (2) of the Act, the register that the Society is required to establish and maintain under section 27.1 of the Act shall contain the following information:

1. The assumed names, if any, of each licensee.
2. An indication of every time that the licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario.
3. For each time period that a licensee practises law in Ontario as a barrister and solicitor or provides legal services in Ontario,
 - i. where and in what capacity the licensee practises law or provides legal services, and
 - ii. the licensee's business contact information, including address, telephone number, facsimile number and e-mail address.
4. For each time period that a licensee does not practise law in Ontario as a barrister and solicitor or provide legal services in Ontario,
 - i. if the licensee is otherwise working, the licensee's business contact information, including address, telephone number, facsimile number and e-mail address, or
 - ii. if the licensee is not otherwise working, information as to how a licensee may be contacted by former clients.
5. For a licensee who is deceased, the name and contact information, if any, of the licensee's estate trustee.

Availability to public

(2) The Society shall make the register available for public inspection in one or more of the following ways:

1. By establishing and maintaining a directory of licensees containing some or all of the information contained in the register on the Society's website.

2. By publishing a print directory of licensees containing some or all of the information contained in the register.
3. By establishing and maintaining a telephone line, open during the Society's normal business hours, for answering inquiries about contents of the register with respect to any licensee.

AMENDMENTS TO RULE 2.08 OF THE *RULES OF PROFESSIONAL CONDUCT* AND RULE 5.01 OF THE *PARALEGAL RULES OF CONDUCT*

Motion

- 58. That Convocation amend**
- a. subrules 2.08(6), (7) and (8) of the *Rules of Professional Conduct* as set out at paragraph 61 to reflect permitted arrangements between lawyers and paralegals for the division of fees and payment of referral fees, and**
 - b. subrule 5.01(10) of the *Paralegal Rules of Conduct* as asset out at paragraph 62 to be consistent with the amendment to subrule 2.08(6) above.**
59. Rule 2.08 of the *Rules of Professional Conduct*, dealing with fees and disbursements, includes subrules (6), (7) and (8) on division of fees and referral fees. The current language in these subrules refers to lawyers for the purposes of these arrangements, rather than licensees. The companion rules in the *Paralegal Rules of Conduct* (subrules 5.01(10), (11) and (12)) refer to licensees (see **Appendix 7**).
60. For regulatory consistency and to reflect permitted arrangements, the Committee proposes that subrules (6), (7) and (8) be amended to refer to licensees in the appropriate places. This would make it clear that lawyers may divide fees with paralegals in accordance with subrule (6) and accept referral fees from paralegals to whom matters are referred in accordance with subrule (7). It will also make it clear that the prohibition in subrule (8) on splitting fees or paying referral fees does not apply to arrangements between lawyers and paralegals.
61. The following shows the proposed amendments to the subrules:

Rule 2.08

Division of Fees and Referral Fees

(6) Where the client consents, fees for a matter may be divided between licensees ~~lawyers~~ who are not in the same ~~law~~ firm, provided that the fees are divided in proportion to the work done and the responsibilities assumed.

(7) Where a lawyer refers a matter to another licensee ~~lawyer~~ because of the expertise and ability of the other licensee ~~lawyer~~ to handle the matter and the referral was not made because of a conflict of interest, the referring lawyer may accept and the other licensee ~~lawyer~~ may pay a referral fee provided that

- (a) the fee is reasonable and does not increase the total amount of the fee charged to the client, and
- (b) the client is informed and consents.

(8) A lawyer shall not

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee ~~lawyer~~,
or
- (b) give any financial or other reward to any person who is not a licensee ~~lawyer~~ for the referral of clients or client matters.

62. A minor amendment to the *Paralegal Rules of Conduct* is also required for consistency with the above amendments. As the word “law” in subrule 2.08(6) above is being deleted, the word “paralegal” in the paralegal companion subrule 5.01(10), as shown below, should also be deleted. This amendment is being proposed through this report with the approval of the Chair of the Paralegal Standing Committee.

Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same ~~paralegal~~ firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

PARALEGAL RULES OF CONDUCT

RULE 5.01 FEES AND RETAINERS

Division of Fees

(10) Fees for a matter may be divided between licensees who are not in the same paralegal firm if the client consents and the fees are divided in proportion to the work done and the responsibilities assumed.

Fee Splitting

(11) A paralegal shall not,

- (a) directly or indirectly share, split, or divide his or her fees with any person who is not a licensee; or
- (b) give any financial or other reward to any person who is not a licensee, for the referral of clients or client matters.

Referral Fees

(12) A paralegal who refers a matter to another licensee because of the expertise and ability of the other licensee to handle the matter may accept, and the other licensee may pay, a referral fee if,

- (a) the referral was not made because of a conflict of interest,
- (b) the fee is reasonable and does not increase the total amount of the fee charged to the client; and
- (c) the client is informed and consents.