

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

Anti-Money Laundering and Terrorist Financing Working Group

Final Report on the Model Rules

Amended October 1, 2018



INTRODUCTION

1. The Federation of Law Societies of Canada and its member law societies have been actively engaged in the fight against money laundering and the financing of terrorist activities for more than 15 years. Ensuring effective anti-money laundering and terrorist financing rules and regulations for the legal profession continues to be a strategic priority of the Federation.
2. Two model rules, aimed at limiting the handling of cash by members of the legal profession and ensuring legal counsel engage in due diligence in identifying their clients, have been the cornerstone of the regulators' anti-money laundering and anti-terrorism financing initiatives. The No Cash and Client Identification and Verification Model Rules (the "Model Rules") adopted in 2004 and 2008 respectively have been implemented by all Canadian law societies.
3. In October 2016, the Federation Council asked the CEOs Forum to establish a working group of senior staff to review the Model Rules. The Council recognized that a review of the Model Rules was overdue, particularly in light of a number of developments on the anti-money laundering and counter-terrorist financing landscape, including amendments to federal anti-money laundering and terrorist financing regulations, and the report of the mutual evaluation of Canada's federal anti-money laundering regime by the Financial Action Task Force ("FATF").
4. The Anti-Money Laundering and Terrorist Financing Working Group (the "Working Group") is co-chaired by Jim Varro, Director, Office of the CEO at the Law Society of Ontario and Frederica Wilson, Executive Director, Regulatory Policy and Public Affairs and Deputy CEO at the Federation. The other members of the Working Group are:
 - Susan Robinson – Executive Director, Law Society of Prince Edward Island
 - Chioma Ufodike – Manager, Trust Safety, Law Society of Alberta
 - Elaine Cumming – Professional Responsibility Counsel, Nova Scotia Barristers' Society
 - Deb Armour – Chief Legal Officer, Law Society of British Columbia
 - Jeanette McPhee – CFO and Director of Trust Regulation, Law Society of British Columbia
 - Leah Kosokowsky – Director, Regulation, Law Society of Manitoba
 - Anthony Gonsalves – Team Manager, Professional Regulation, Law Society of Ontario
 - Sylvie Champagne – Secrétaire de l'Ordre et Directrice du contentieux, Barreau du Québec
 - Nicholas Handfield – Chef, Services juridiques et relations institutionnelles, Chambre des notaires de Québec
 - Brenda Grimes – Executive Director, Law Society of Newfoundland and Labrador

5. From October 2017 until mid-March 2018 the Working Group held a consultation on a number of proposed amendments to the Model Rules and the introduction of a new Trust Accounting Model Rule. The Working Group received comments on the proposed rule changes from nine of the 14 law societies, the Canadian Bar Association, the Ontario Bar Association and several individual lawyers. In addition to providing feedback on the amendments proposed by the Working Group and on the proposed new Trust Accounting Model Rule, a number of commentators recommended other changes to the rules. Where such additional changes were consistent with ones explored in the consultation, or were simple matters of wording, the Working Group has responded to them in the final amendments. There were, however, some recommendations that were outside the scope of the consultation. That development, together with the fact that the government introduced new amendments to the federal anti-money laundering regulations part-way through the consultation period that are relevant to the rules, led the Working Group to conclude that there would be merit in a second, focused review of the rules in the near future. Finally, the Working Group's research highlighted the potential value of a risk-based approach to law societies' anti-money laundering and anti-terrorism financing regulation. The Working Group suggests that the Federation may wish to consider a move in that direction in the future.
6. The final proposed amendments and the new trust accounting rule for approval by the Council are set out in full in appendices to this report. The proposed amendments and new rule, the rationale for them and a summary of the feedback received together with the Working Group's response to the feedback are discussed in the body of the report.

NO CASH MODEL RULE

Definitions

7. In its consultation report, the Working Group proposed the addition of several definitions to the No Cash rule. Those additions have been maintained, but additional changes have been made to the definitions section to ensure consistency with the definitions in the Client Identification and Verification rule. This includes revisions to the definitions of "financial institution" and "public body" and the addition of a definition of "financial services cooperative".

Exceptions

8. To reflect the intention to restrict the situations in which legal counsel can accept large amounts of cash, the Working Group had recommended the deletion of some of the exceptions in the rule. In response to feedback from a number of law societies and others, the Working Group reconsidered some of the proposed amendments to the circumstances in which legal counsel may accept more than \$7,500 in cash. It is now proposed that exceptions for cash received from a peace officer, law enforcement agency or other agent of the Crown and to pay bail be maintained. The only exception that has been eliminated is that relating to cash received pursuant to a court order.



Other Amendments

9. The Working Group has maintained amendments to section 1 of the rule to clarify the amount of cash a lawyer may accept. The rule now specifies that a lawyer must not accept cash in an amount greater than \$7,500. In response to feedback received during the consultation, the section has also been amended to delete the words “or transaction”. The Working Group agreed that it is clearer to tie the cash limit to client matters. Pursuant to the amended rule, legal counsel may not accept cash in an aggregate amount greater than \$7,500 for any one client matter.
10. Also for greater clarity, the Working Group has removed the words “from a person” from section 1 and has changed “shall” to “must” or “will” (as appropriate) throughout the rule.

CLIENT IDENTIFICATION AND VERIFICATION RULE

Definitions

11. The Working Group is proposing a number of amendments to the definitions in the Client Identification and Verification rule, primarily to align with amended definitions in the federal regulations where similar terms are used in the Model Rule. These include the addition of definitions of “credit union central”, “disbursements”, “expenses”, “financial services cooperative” and “professional fees” and the deletion of the definition of “proceedings”. Amendments are also proposed to existing definitions including “financial institution”, “funds”, “public body”, and “securities dealer”. With the exception of additional changes to ensure the definitions refer to provinces and territories, the amendments to the definitions are unchanged from the version contained in the consultation document.
12. As reported in the consultation report, the Working Group discussed whether a band defined under the *Indian Act* (Canada) should be added to the definition of “public body”, although the corresponding definition in the federal regulations do not include Indian bands. This issue first arose some years ago and was the subject of research by the Federation, but no determination was made at that time. The Working Group considers this an important issue and to ensure that it is carefully considered, it is conducting additional research and will report on the issue at a later date.

Requirement to Identify Client

13. One of the amendments proposed in the consultation was the addition of language to subsection 2(1) of the client identification rule to situate the requirements of the section in the broader context of lawyers’ due diligence obligations. The amended provision reads (new language underlined):

2(1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer’s obligation to know their client, understand the client’s dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

14. The proposed amendment attracted comments from several law societies, most asking for clarification about the extent of the obligations referred to and one law society questioning whether the additional language would create “unintended conduct obligations for lawyers.” The members of the Working Group note that the additional language is intended to articulate existing obligations not create new ones. The Working Group considers it important to remind members of the profession that they have obligations beyond the specific duties set out in the rule and that the provisions in the rule must be understood in light of those obligations. The Working Group is recommending that the amendment be made, but recognizes that members of the profession will need guidance to fully understand their obligations. Guidance on this issue will be included in the guidelines and educational material for the profession that the Working Group is preparing.
15. Section 3 of the rule has been reorganized to clarify the information that legal counsel must obtain and record to identify clients who are individuals. The provisions addressing individuals and those addressing organizations have been separated and minor amendments have been made to the wording of the section.

Verification of Client Identity - Exemptions

16. In the consultation report, the Working Group proposed deleting certain exemptions to the obligation to verify client identity when a lawyer “engages in or gives instructions in respect of the receiving, paying or transferring of funds.” In response to feedback received during the consultation the Working Group has decided to recommend deleting only two of the existing exemptions: those dealing with funds paid or received pursuant to a court order or a settlement of any legal or administrative proceeding (subsections 5 (2)(d) (the first phrase) and (e)). It is the view of the members of the Working Group that there is some risk of money laundering in both cases and that eliminating the exemptions will not cause significant inconvenience to lawyers or their clients.
17. Prompted by feedback during the consultation from a number of sources questioning the exemption for electronic funds transfers (“EFTs”), the Working Group also considered whether it should recommend the deletion of that exemption. Under the existing rule, members of the legal profession are not required to verify the identity of a client when the financial transactions in which they are involved, or about which they provide instructions, are done by EFT. The primary rationale for the exception is that financial institutions, which conduct EFTs, assert extensive controls over these transactions. Pursuant to the definition of “electronic funds transfer” in the rule, only EFTs conducted by financial institutions are covered by the exemption. In addition, as the definition makes clear, neither the sending nor receiving account holders handle or control the transfer of the funds. Finally, the rule requires that the EFT transmission records contain important identifying information including the date of the transfer, the amount, and the names of the sending and receiving account holders and the parties or persons conducting and receiving the EFT.
18. Although the Working Group did not propose any change to this exemption, some commentators raised concerns about the possible breadth of the exemption and suggested that they present a risk of money laundering or terrorism financing activities even with the monitoring and controls placed on EFTs by financial institutions. The

Working Group agrees that there is merit in considering whether to remove the exemption, but in order to ensure that there is appropriate consultation on the issue, has decided to defer a decision on a possible recommendation to the next phase of its work. In the meantime the Working Group is recommending minor amendments to sections 4 and 5 of the rule to more clearly identify the EFT exemption.

Verification of Client Identity – Obligations

19. The Working Group consulted on a number of amendments to the provisions relating to the requirement to verify identity. Most were based on changes to the federal regulations, including a recommendation to remove the “reasonable measures” standard from the client verification provisions (subsection 6(1)). Another reflected the Working Group’s view that due diligence in knowing the client, their business, and how it intersects with the lawyer’s services, should include an inquiry into the source of funds involved in a transaction (subsection 6(1)(a)).
20. Although some respondents to the consultation expressed concern about the removal of the “reasonable measures” standard from subsection 6(1), the proposed change was generally well received. One of the concerns expressed was that the change could limit access to justice in some circumstances. The members of the Working Group note that the requirement to verify identity of clients does not apply in every lawyer-client relationship, but only when the receipt, payment or transfer of funds is involved. In addition there are a number of options for satisfying the verification requirement. In the view of the members of the Working Group, the requirements will increase the effectiveness of the rules in managing the risks of money laundering and terrorism financing activities, and are unlikely to create a barrier to the provision of legal services.
21. Questions were, however, raised about the proposed new requirement to obtain information about the source of funds (subsection 6(1)(a)). As drafted, the revised provision will require counsel to inquire into the source of funds involved in the financial transaction that triggers the verification requirement. To respond to feedback from the consultation and to ensure legal counsel understand the scope of this new obligation, the Working Group will provide additional guidance in the guidelines being prepared for the profession on the rules.
22. There were also questions about the meaning of “independent source documents” referred to in the version of subsection 6(1)(b) contained in the consultation report. Changes have been made to this section to clearly identify the requirement to verify identity using the documents or information specified in what is now subsection 6(6) of the rule.

Verification of Client Identity - Methods

23. Proposed changes to the methods that can be used to verify the identity of clients prompted numerous questions. A number of respondents concluded, for example, that the amendments would require all client verification to be done in person (eliminating the use of agents) and others raised concerns about the potential impact of the changes to verification methods in circumstances that would not actually trigger the verification requirement. The Working Group has made a number of changes to the final proposed

amendments to clarify their intent, and will provide detailed guidance in the materials being prepared for the profession on when they must simply *identify* their clients (or third parties) and when they must *verify* the client's (or third parties') identity.

24. New provisions have been added at subsections 6(2) and 6(3) to make it clear that counsel *may* use an agent in any circumstances to obtain the required verification information and *must* use an agent when a client is not physically present in Canada. In all cases, the lawyer must have a written agreement with the agent, and upon receiving from the agent the information obtained to verify identity, must review it to ensure that it is valid and current.
25. Additional amendments to the provisions on the use of an agent that were made to respond to changes to the corresponding provisions in the federal regulations are unchanged from the consultation report. Key changes include
- (i) a requirement to satisfy oneself that the information obtained through an agent is valid,
 - (ii) the ability to rely on an agent's previous verification in the circumstances set out, and
 - (iii) no requirement for subsequent verification unless there are doubts about the information related to the original verification (the test before was 'if the lawyer recognizes the person').
26. Although the amendments to the provisions outlining the methods that may be used to verify identity (subsection 6(6)) are largely unchanged following the consultation, the Working Group has revised the heading of the section to more clearly indicate that it sets out the documents and information that can be used. In response to feedback received from the consultation about unfairness to lawyers in small firms or those that are not affiliated with other firms, the Working Group has removed a proposed amendment that would have permitted reliance on previous verification by an affiliated firm.
27. The amended rule will require the identity of clients who are individuals to be verified in one of the following ways:
- (i) by reference to a current government issued photo identification document;
 - (ii) by reference to information in an individual's credit file; or
 - (iii) by a dual process method using information from a reliable source confirming the client's name and address, name and date of birth, or existence of a deposit account, credit card, or loan in the client's name.
28. Additional amendments speak to verifying the identity of individuals under the age of 15. In the case of those under the age of 12, it is the identity of the parent or guardian that must be verified. For those between 12 and 15, identity may be verified by referring to information from a reliable source that contains the name and address of one of the child's parents and confirming that it is the child's address.

Identifying Directors, Shareholders and Owners of Organizations

29. The consultation report contained several significant amendments to the requirements relating to identity verification for clients that are organizations (subsection 6(7)), including a proposal to delete the “reasonable efforts” standard, creating a requirement to *obtain*, rather than simply to *make reasonable efforts to obtain*, the names of all directors of an organization, and the names and addresses of the owners. Tracking changes to the federal regulations, the proposed amendments also introduced a requirement to “take reasonable measures to confirm the accuracy of the information obtained.” Responding to a criticism of both the law societies’ rules and the federal regulations, the Working Group also proposed the addition of a requirement to obtain beneficial ownership information. Although these amendments elicited less feedback than anticipated, some respondents raised serious concerns. One law society suggested that “these proposed amendments would place an incredibly onerous responsibility on lawyers and might in fact be impossible to comply with in certain circumstances.”
30. The Working Group understands these concerns and in the consultation report acknowledged the potential challenges to compliance with the beneficial ownership requirement, writing that “in the absence of a robust corporate registry system that includes beneficial ownership information, complying with this requirement may sometimes be difficult.” This concern was repeated in submissions of the Federation to the House of Commons Standing Committee on Finance in the spring, in which the Federation called for the creation of publicly accessible registries of beneficial owners. Despite these concerns, the Working Group initially concluded that as drafted, the amendments set a reasonable requirement and specifically acknowledge that it may not be possible to obtain the information. However, additional feedback from the law societies has persuaded the Working Group that in the absence of publicly accessible information on beneficial owners, a mandatory requirement in the rule would be neither appropriate nor effective. The Working Group has therefore revised the proposed amendment to subsection 6(7) to require legal counsel to “make reasonable efforts” to obtain the names and addresses of persons who own or control 25% or more of an organization. As obtaining the corresponding information for the beneficiaries and settlors of trusts would pose similar challenges, the “reasonable efforts” standard will apply to this requirement as well.
31. The changes to subsection 6(7) have necessitated changes to other subsections of the rule to ensure an effective requirement. Pursuant to the revised subsection 6(10), when legal counsel are not able to obtain the prescribed information on the directors, trustees and owners of organizations they must “take reasonable measures to ascertain the identity of the most senior managing officer of the organization.” The original proposal to require counsel to also “treat the activities in respect of that organization as requiring ongoing monitoring...” has been replaced with a requirement to determine whether the information received from the client in respect of their activities and funds, and the client’s instructions are consistent with the purpose of the retainer and the other information obtained under the rule. The revised provision would also require counsel to assess whether there is a risk that they might be assisting in or encouraging fraud or other illegal conduct.



32. The members of the Working Group believe that it is essential that the regulators address the money laundering and terrorism financing risks present in legal practice through robust rules that will assist legal counsel in avoiding unwitting involvement in these illegal activities. The potential for individuals to hide their identity as the actual owners of organizations has been identified as presenting a significant risk for money laundering and the financing of terrorist activities, and the Working Group remains convinced that requiring legal counsel to identify those who own or control organizations is necessary. For that reason the Working Group recommends that the Federation revisit the proposal for a mandatory requirement to obtain beneficial ownership information if and when publicly accessible registries are created.

Timing of Verification

33. Proposals made to address concerns raised by some law societies about the length of time permitted for verifying the identity of an organization after engaging in or giving instructions in the matter have not been changed. Although the Working Group did receive some feedback questioning the move from a 60 to a 30 day deadline for verification, most of the feedback was supportive of the amendment. The members of the Working Group also concluded that the shorter deadline, which is consistent with the federal regulations, is more consistent with the purpose of the provision.
34. Two additional amendments related to subsequent verification are also recommended for approval (see subsections 6(12) and 6(14)). For both individuals and organizations, a lawyer who has previously verified the individual or organizational client need not do so again “unless the lawyer has reason to believe the information, or the accuracy of it, has changed.” These changes were included in the consultation report, but minor changes have been made to the wording to ensure consistency between the two subsections.

Ongoing Monitoring

35. In its consultation, the Working Group proposed the addition of a new provision requiring ongoing monitoring of clients (section 10) to determine whether the client’s information and instructions are consistent with the purpose of the retainer and to ensure the lawyer is not assisting in or encouraging dishonesty, fraud, crime or illegal conduct. The proposal was prompted by a provision in the federal regulations relating to ongoing monitoring of the business relationship with a client in the context of assessing risks relating to money laundering associated with the relationship. The Working Group also proposed the addition of a reference to ongoing monitoring to the provision requiring a lawyer to withdraw from representation of the client if, once retained, the lawyer becomes aware that they would be assisting the client in fraud or other illegal conduct.
36. Respondents to the consultation flagged the need for clarity about the steps lawyers will be expected to take to comply with the ongoing monitoring provision and the circumstances in which the requirement will apply. The Working Group agrees that guidance on the application of the section is needed and will provide it in the materials for the profession that are being prepared.
37. Concern was also expressed about the fact that one of the identified purposes of ongoing monitoring is “ensuring that the lawyer is not assisting in or encouraging

dishonesty, fraud, crime or illegal conduct.” It was suggested that this sets too high a standard. The Working Group notes that members of the legal profession are bound by rules of professional conduct not to “knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct.” To address the concerns that were raised in the consultation, the provision has been amended to be consistent with the existing professional conduct obligation.

Other amendments

38. The Working Group is proposing a few other minor amendments for greater clarity and consistency. These include the substitution of “must” or “will” for the word “shall” as appropriate throughout the rule.

TRUST ACCOUNTING MODEL RULE

39. The consultation report included a new trust accounting model rule intended to restrict the use of lawyers’ trust accounts to purposes directly connected to the provision of legal services. As noted in the report, a number of law societies already have such rules. In the view of the Working Group, allowing members of the legal profession to use their trust accounts for purposes unrelated to the provision of legal services unnecessarily increases the risk of money laundering or other illegal activity even when the money in question is not cash.
40. The proposed rule was generally well received, but there were some criticisms and questions about the drafting. The Working Group has redrafted the rule in response. In keeping with the general drafting style of law society rules and regulations, the proposed new model rule now makes it clear that the obligations are imposed on individual lawyers. In response to concerns that the commentary seemed to impose additional obligations on lawyers, it has been removed in the final draft. The Working Group will instead provide guidance on the rule in the guidelines for the profession that are being prepared. Finally, a definition of “money” has been added to the rule for clarity. The proposed rule now reads as follows:

Definitions

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer’s law firm is providing.
2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.

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Model Rule on Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
- (c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act,

- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

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

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada 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 authority 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, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer must not receive or accept cash in an aggregate amount of greater than \$7,500 Canadian in respect of any one client matter.
2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency the lawyer will be deemed to have received or accepted the cash converted into Canadian dollars at
 - (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
 - (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.
3. Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:
 - (a) receiving or paying funds;
 - (b) purchasing or selling securities, real properties or business assets or entities;
 - (c) transferring funds by any means.
4. Despite section 3, section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm
 - (a) from a financial institution or public body,
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
 - (c) pursuant to pay a fine, penalty, or bail, or
 - (d) for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

Model Rule on Recordkeeping Requirements for Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

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

1. Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer’s practice, shall maintain
 - (a) a book of original entry identifying the method by which money is received in trust for a client, and
 - (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.
2. Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.
3. The financial records described in paragraphs 1 and 2 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.
4. The financial records described in paragraphs 1 and 2 shall be entered and posted so as to be current at all times.

5. A lawyer shall keep the financial records described in paragraphs 1 and 2 for at least the six year period immediately preceding the lawyer's most recent fiscal year end. [This paragraph does not apply to lawyers in Quebec as the Barreau requires that such records be retained without any limitation.]



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“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,
- (c) cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act,

- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public, or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by An Act respecting financial services cooperatives, CQLR, c. C-67.3, or An Act respecting the Mouvement Desjardins, S.Q. 2000, c.77, other than a caisse populaire.

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

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada 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 authority 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, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

1. A lawyer ~~shall~~must not receive or accept ~~from a person,~~ cash in an aggregate amount of greater than \$7,500 ~~or more~~ Canadian or more dollars in respect of any one client matter ~~or transaction~~.

2. For the purposes of this rule, when a lawyer receives or accepts cash in a foreign currency ~~from a person~~ the lawyer ~~shall~~will be deemed to have received or accepted the cash converted into Canadian dollars at
 - (a) the official conversion rate of the Bank of Canada for the foreign currency as published in the Bank of Canada's Daily Noon Rates that is in effect at the time the lawyer receives or accepts the cash, or
 - (b) if the day on which the lawyer receives or accepts cash is a holiday, the official conversion rate of the Bank of Canada in effect on the most recent business day preceding the day on which the lawyer receives or accepts the cash.

3. ~~Paragraph~~Section 1 applies when a lawyer engages on behalf of a client or gives instructions on behalf of a client in respect of the following activities:
 - (a) receiving or paying funds;
 - (b) purchasing or selling securities, real properties or business assets or entities;
 - (c) transferring funds by any means.

4. Despite ~~paragraph~~section 3, ~~paragraph~~section 1 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm
 - (a) from a financial institution or public body,
 - (b) from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
 - (c) pursuant to a court order, or to pay a fine, penalty, or bail, or
 - (d) in an amount of \$7,500 or more for professional fees, disbursements, or expenses or bail, provided that any refund out of such receipts is also made in cash.

- ~~(a) pursuant to a court order, or to pay a fine or penalty, or~~
- ~~(b) in an amount of \$7,500 or more for professional fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.~~



Model Rule on Recordkeeping Requirements for Cash Transactions

“cash” means coins referred to in section 7 of the *Currency Act*, notes issued by the Bank of Canada pursuant to the *Bank of Canada Act* that are intended for circulation in Canada and coins or bank notes of countries other than Canada;

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

1. Every lawyer, in addition to existing financial recordkeeping requirements to record all money and other property received and disbursed in connection with the lawyer’s practice, shall maintain
 - (a) a book of original entry identifying the method by which money is received in trust for a client, and
 - (b) a book of original entry showing the method by which money, other than money received in trust for a client, is received.
2. Every lawyer who receives cash for a client shall maintain, in addition to existing financial recordkeeping requirements, a book of duplicate receipts, with each receipt identifying the date on which cash is received, the person from whom cash is received, the amount of cash received, the client for whom cash is received, any file number in respect of which cash is received and containing the signature authorized by the lawyer who receives cash and of the person from whom cash is received.
3. The financial records described in paragraphs 1 and 2 may be entered and posted by hand or by mechanical or electronic means, but if the records are entered and posted by hand, they shall be entered and posted in ink.
4. The financial records described in paragraphs 1 and 2 shall be entered and posted so as to be current at all times.

5. A lawyer shall keep the financial records described in paragraphs 1 and 2 for at least the six year period immediately preceding the lawyer's most recent fiscal year end. [This paragraph does not apply to lawyers in Quebec as the Barreau requires that such records be retained without any limitation.]





Model Rule on Client Identification and Verification

Definitions

1. In this Rule,

“credit union central” means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial or territorial Act other than one enacted by the legislature of Quebec.

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the [Financial Action Task Force](#), where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) an authorized foreign bank within the meaning of section 2 of the *Bank Act* in respect of its business in Canada,

- (c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company that is regulated by the *Trust and Loan Companies Act* (Canada),
- (h) a trust company or loan company that is regulated by a provincial or territorial Act;
- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory when it accepts deposit liabilities in the course of providing financial services to the public; or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

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

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

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

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada 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 authority 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, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

“reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the *Income Tax Act* (Canada) and operates in a country that is a member of the Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation.

"securities dealer" means persons and entities authorized under provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

Requirement to Identify Client

2. (1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

(2) A lawyer's responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

(3) Sections 3 through 10 do not apply to

(a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 4 on behalf of his or her employer;

(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 10,

or,

(c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect of the receiving, paying or transferring of funds other than an electronic funds transfer.

3. A lawyer who is retained by a client as described in subsection 2(1) must obtain and record, with the applicable date, the following information:

(1) for individuals:

(a) the client's full name,

(b) the client's home address and home telephone number,

- (c) the client's occupation or occupations, and
 - (d) the address and telephone number of the client's place of work or employment, where applicable;
- (2) for organizations:
- (a) the client's full name, business address and business telephone number,
 - (b) other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
 - (c) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
 - (d) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained,
- (3) if the client is acting for or representing a third party, information about the third party as set out in subsections (1) or (2) as applicable.

When Verification of Client Identity Required

4. Subject to section 5, section 6 applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds.

Exemptions re: certain funds

5. Section 6 does not apply
- (1) where the client is a financial institution, public body or reporting issuer,
 - (2) in respect of funds,
 - (a) paid by or to a financial institution, public body or a reporting issuer;

- (b) received by a lawyer from the trust account of another lawyer;
 - (c) received from a peace officer, law enforcement agency or other public official acting in their official capacity;
 - (d) paid or received to pay a fine, penalty, or bail; or
 - (e) paid or received for professional fees, disbursements, or expenses;
- (3) to an electronic funds transfer.

Requirement to Verify Client Identity

6. (1) When a lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, the lawyer must
- (a) obtain from the client and record, with the applicable date, information about the source of funds described in section 4, and
 - (b) verify the identity of the client, including the individual(s) described in paragraph 3(2)(d), and, where appropriate, the third party using the documents or information described in subsection (6).

Use of Agent

(2) A lawyer may rely on an agent to obtain the information described in subsection (6) to verify the identity of an individual client, third party or individual described in paragraph 3(2)(d) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

(3) Notwithstanding subsection (2), where an individual client, third party or individual described in paragraph 3(2)(d) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subsection (4) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

Agreement for Use of Agent

(4) A lawyer who enters into an agreement or arrangement referred to in subsection (2) or (3) must:

- (a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and
- (b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subsection (6).

(5) A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in paragraph 3(2)(d) if the agent was, at the time they verified the identity,

- (a) acting in their own capacity, whether or not they were required to verify identity under this Rule, or
- (b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Rule, for the purpose of verifying identity under subsection (6).

Documents and information for verification

(6) For the purposes of paragraph (1)(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:

- (a) if the client or third party is an individual,
 - (i) an identification document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual;
 - (ii) information that is in the individual's credit file if that file is

located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;

(iii) any two of the following with respect to the individual:

(A) Information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;

(B) Information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or

(C) Information that contains the individual's name and confirms that they have a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information.

(b) For the purposes of clauses (6)(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, lawyer and agent cannot be a source.

(c) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian.

(d) To verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under clause (6)(a)(iii)(A) that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.

(e) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as

- (i) a certificate of corporate status issued by a public body,
 - (ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or
 - (iii) a copy of a similar record obtained from a public body that confirms the organization's existence; and
- (f) if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

Requirement to Identify Directors, Shareholders and Owners

(7) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 4 for a client or third party that is an organization referred to in paragraph (6)(e) or (f), the lawyer must:

- (a) obtain and record, with the applicable date, the names of all directors of the organization, other than an organization that is a securities dealer; and
- (b) make reasonable efforts to obtain, and if obtained, record with the applicable date,
 - (i) the names and addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization,
 - (ii) the names and addresses of all trustees and all known beneficiaries and settlors of the trust, and
 - (iii) in all cases, information establishing the ownership, control and structure of the organization.

(8) A lawyer must take reasonable measures to confirm the accuracy of the information obtained under subsection (7).

(9) A lawyer must keep a record, with the applicable date(s), that sets out the information obtained and the measures taken to confirm the accuracy of that information.

(10) If a lawyer is not able to obtain the information referred to in subsection (7) or to confirm the accuracy of that information in accordance with subsection (8), the lawyer must

- (a) take reasonable measures to ascertain the identity of the most senior managing officer of the organization;
- (b) determine whether
 - (i) the client's information in respect of their activities,
 - (ii) the client's information in respect of the source of the funds described in section 4, and
 - (iii) the client's instructions in respect of the transaction, are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule;
- (c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and
- (d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).

Timing of Verification for Individuals

(11) A lawyer must verify the identity of

- (a) a client who is an individual, and
- (b) the individual(s) authorized to provide and giving 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.

(12) Where a lawyer has verified the identity of an individual, the lawyer is not required to subsequently verify that same identity unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Timing of Verification for Organizations

(13) A lawyer must verify the identity of a client that is an organization upon engaging in or giving instructions in respect of any of the activities described in section 4, but in any event no later than 30 days thereafter.

(14) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection (7), the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Record keeping and retention

7. (1) A lawyer must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of subsection 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 must retain a record of the information, with the applicable date, and any documents obtained for the purposes of section 3, subsection 6(7) and subsection 10(2) and copies of all documents received for the purposes of subsection 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 section 3 and subsections 6(1), (7) or (10), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

(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.

Monitoring

10. During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, the lawyer must:

- (1) monitor on a periodic basis the professional business relationship with the client for the purposes of:
 - (a) determining whether
 - (i) the client's information in respect of their activities,
 - (ii) the client's information in respect of the source of the funds described in section 4, and
 - (iii) the client's instructions in respect of transactions are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule, and
 - (b) assessing whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and

(2) keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of paragraph (1)(a) above.

Duty to withdraw

11. (1) If while retained by a client, including when taking the steps required in section 10, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other 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.

Federation of Law Societies
of Canada



Fédération des ordres professionnels
de juristes du Canada

Model Rule on Client Identification and Verification Requirements

*Adopted by Council of the Federation of Law Societies of Canada
March 20, 2008 and modified on December 12, 2008*

Definitions

1. In this Rule,

“credit union central” means a central cooperative credit society, as defined in section 2 of the *Cooperative Credit Associations Act*, or a credit union central or a federation of credit unions or caisses populaires that is regulated by a provincial Act other than one enacted by the legislature of Quebec.

“disbursements” means amounts paid or required to be paid to a third party by the lawyer or the lawyer’s firm on a client’s behalf in connection with the provision of legal services to the client by the lawyer or the lawyer’s firm which will be reimbursed by the client;

“electronic funds transfer” means an electronic transmission of funds conducted by and received at a financial institution or a financial entity headquartered in and operating in a country that is a member of the [Financial Action Task Force](#), where neither the sending nor the receiving account holders handle or transfer the funds, and where the transmission record contains a reference number, the date, transfer amount, currency and the names of the sending and receiving account holders and the conducting and receiving entities.

“expenses” means costs incurred by a lawyer or law firm in connection with the provision of legal services to a client which will be reimbursed by the client including such items as photocopying, travel, courier/postage, and paralegal costs;

“financial institution” means

- (a) a bank that is regulated by the *Bank Act*,
- (b) 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,~~
- (c) a cooperative credit society, savings and credit union or caisse populaire that is regulated by a provincial or territorial Act,
- (d) an association that is regulated by the *Cooperative Credit Associations Act* (Canada),
- (e) a financial services cooperative,
- (f) a credit union central,
- (g) a company ~~to which that is regulated by~~ the *Trust and Loan Companies Act* (Canada) ~~applies,~~
- (h) a trust company or loan company that is regulated by a provincial or territorial Act;
- (i) a department or an entity that is an agent of Her Majesty in right of Canada or of a province or territory ~~where the department or agent~~ when it accepts deposit liabilities in the course of providing financial services to the public; or
- (j) a subsidiary of the financial institution whose financial statements are consolidated with those of the financial institution.

“financial services cooperative” means a financial services cooperative that is regulated by *An Act respecting financial services cooperatives*, CQLR, c. C-67.3, or *An Act respecting the Mouvement Desjardins*, S.Q. 2000, c.77, other than a caisse populaire.

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

“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;

~~“proceedings” means a legal action, application or other proceeding commenced before a court of any level, a statutory tribunal in Canada or an arbitration panel or arbitrator established pursuant to provincial, federal or foreign legislation and includes proceedings before foreign courts.~~

“professional fees” means amounts billed or to be billed to a client for legal services provided or to be provided to the client by the lawyer or the lawyer’s firm;

“public body” means

- (a) a department or agent of Her Majesty in right of Canada or of a province or territory,
- (b) an incorporated city, town, village, metropolitan authority, township, district, county, rural municipality or other incorporated municipal body in Canada or an agent in Canada 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 authority 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, or
- (f) a subsidiary of a public body whose financial statements are consolidated with those of the public body.

“reporting issuer” means an organization that is a reporting issuer within the meaning of the securities laws of any province or territory of Canada, or a corporation whose shares are traded on a stock exchange that is designated under section 262 of the *Income Tax Act* (Canada) and operates in a country that is a member of the

Financial Action Task Force, and includes a subsidiary of that organization or corporation whose financial statements are consolidated with those of the organization or corporation.

"securities dealer" means ~~a person or entity that is~~ persons and entities authorized under provincial or territorial legislation to engage in the business of dealing in securities or any other financial instruments or to provide portfolio management or investment advising services, other than persons who act exclusively on behalf of such an authorized person or entity.

Client Identity Requirement to Identify Client

2. (1) Subject to subsection (3), a lawyer who is retained by a client to provide legal services must comply with the requirements of this Rule: in keeping with the lawyer's obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client.

(2) A lawyer's responsibilities under this Rule may be fulfilled by any member, associate or employee of the lawyer's firm, wherever located.

- (3) Sections 3 through 9-10 do not apply to
- (a) a lawyer when he or she provides legal services or engages in or gives instructions in respect of any of the activities described in section 4 on behalf of his or her employer;
 - (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 910,
or,
 - (c) a lawyer providing legal services as part of a duty counsel program sponsored by a non-profit organization, except where the lawyer engages in or gives instructions in respect

of the receiving, paying or transferring of funds other than an electronic funds transfer.

3. A lawyer who is retained by a client as described in ~~section~~subsection 2(1) ~~shall~~must obtain and record, with the applicable date, the following information:

(1) for individuals:

- (a) the client's full name,
- ~~(b) the client's home address and home telephone number,~~
- (c) the client's occupation or occupations, and
- (d) the address and telephone number of the client's place of work or employment, where applicable;

(2) for organizations:

- (a) the client's full name, business address and business telephone number, ~~if applicable,~~
- ~~(b)(a) if the client is an individual, the client's home address and home telephone number,~~
- (b) ~~if the client is an organization,~~ other than a financial institution, public body or reporting issuer, the organization's incorporation or business identification number and the place of issue of its incorporation or business identification number, if applicable,
- ~~(a) if the client is an individual, the client's occupation or occupations,~~
- ~~(b) if the client is an organization,~~
- (c) other than a financial institution, public body or a reporting issuer, the general nature of the type of business or businesses or activity or activities engaged in by the client, where applicable, and
- (d) the name and position of and contact information for the individual who is authorized to provide and gives instructions to the lawyer with respect to the matter for which the lawyer is retained,

(3) if the client is acting for or representing a third party, information about the third party as set out in ~~paragraphs (a) to (f)~~subsections (1) or (2) as applicable.

When Verification of Client Identity and Verification Required

4. Subject to section 5, section 6 applies where a lawyer who has been retained by a client to provide legal services engages in or gives instructions in respect of the receiving, paying or transferring of funds, ~~other than an electronic funds transfer.~~

Exemptions re: certain funds

5. ~~(1)~~ Section 6 does not apply (1) where the client is a financial institution, public body or reporting issuer;

(2) ~~Section 6 does not apply~~ in respect of funds,

(a) paid by or to a financial institution, public body or a reporting issuer;

~~(a)~~ — received by a lawyer from the trust account of another lawyer;

(b) _____;

~~(b)(c)~~ received from a peace officer, law enforcement agency or other public official acting in their official capacity;

~~(e)(d)~~ paid or received ~~pursuant to a court order or to pay a fine or~~ penalty; or bail; or

~~(b)~~ — paid or received as a settlement of any legal or administrative proceedings; or

~~(d)(e)~~ paid or received for professional fees, disbursements, or expenses ~~or bail;~~

(3) to an electronic funds transfer.

Requirement to Verify Client Identity

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, including the individual(s) described in section 3, clause (f)(ii), and, where appropriate, the third~~

party, ~~using what the lawyer reasonably considers to be reliable, independent source documents, data or information.~~ the lawyer must

(a) Examples obtain from the client and record, with the applicable date, information about the source of funds described in section 4, and

~~(a)(b)~~ verify the identity of the client, including the individual(s) described in paragraph 3(2)(d), and, where appropriate, the third party using the documents or information described in subsection (6). independent source documents.

Use of Agent

~~(2)~~ For the purposes of subsection (1), independent source documents may include:

(2) A lawyer may rely on an agent to obtain the information described in subsection (6) to verify the identity of an individual client, third party or individual described in paragraph 3(2)(d) provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4).

(3) Notwithstanding subsection (2), where an individual client, third party or individual described in paragraph 3(2)(d) is not physically present in Canada, a lawyer must rely on an agent to obtain the information described in subsection (4) to verify the person's identity provided the lawyer and the agent have an agreement or arrangement in writing for this purpose as described in subsection (4)

Agreement for Use of Agent

(4) A lawyer who enters into an agreement or arrangement referred to in subsection (2) or (3) must:

(a) obtain from the agent the information obtained by the agent under that agreement or arrangement; and

(b) satisfy themselves that the information is valid and current and that the agent verified identity in accordance with subsection (6).

(5) A lawyer may rely on the agent's previous verification of an individual client, third party or an individual described in paragraph 3(2)(d) if the agent was, at the time they verified the identity,

(a) acting in their own capacity, whether or not they were required to verify identity under this Rule, or

(b) acting as an agent under an agreement or arrangement in writing, entered into with another lawyer who is required to verify identity under this Rule, for the purpose of verifying identity under subsection (6).

Documents and Information for Verification

(6) For the purposes of paragraph (1)(b), the client's identity must be verified by referring to the following documents, which must be valid, original and current, or the following information, which must be valid and current, and which must not include an electronic image of a document:

(a) if the client or third party is an individual, ~~valid original government issued~~

(i) an identification, ~~including a driver's licence, birth certificate,~~ document containing the individual's name and photograph that is issued by the federal government, a provincial or territorial ~~health insurance~~ government or a foreign government, other than a municipal government, that is used in the presence of the individual to verify that the name and photograph are those of the individual;

(ii) information that is in the individual's credit file if that file is located in Canada and has been in existence for at least three years that is used to verify that the name, address and date of birth in the credit file are those of the individual;

(iii) any two of the following with respect to the individual:

(A) Information from a reliable source that contains the individual's name and address that is used to verify that the

name and address are of those of the individual;

(B) Information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual, or

~~(A)~~(C) Information that contains the individual's name and confirms that they have a deposit account or a credit card [if such use of the card is not prohibited by the applicable provincial or territorial law], passport or similar record; or other loan amount with a financial institution that is used to verify that information.

(b) For the purposes of clauses (6)(a)(iii)(A) to (C), the information referred to must be from different sources, and the individual, lawyer and agent cannot be a source.

(c) To verify the identity of an individual who is under 12 years of age, the lawyer must verify the identity of one of their parents or their guardian.

(d) To verify the identity of an individual who is at least 12 years of age but not more than 15 years of age, the lawyer may refer to information under clause 6(a)(iii)(A) that contains the name and address of one of the individual's parents or their guardian and verifying that the address is that of the individual.

~~(a)~~(e) if the client or third party is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors, where applicable, such as

(i) ~~(i)~~—a certificate of corporate status issued by a public body,

(ii) ~~(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

~~(b)(f)~~ ~~(c)~~ if the client or third party is an organization, other than a corporation or society, that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constituting documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

Requirement to Identify Directors, Shareholders and Owners

~~(3)~~

(7) When a lawyer is engaged in or gives instructions in respect of any of the activities in section 4 for a client or third party that is an organization referred to in ~~subsection paragraph (2)(b)(6)(e)~~ or ~~(cf)~~, the lawyer ~~shall make reasonable efforts to~~ must

(a) obtain and ~~if obtained,~~ record, with the applicable date,

~~(a)~~ the ~~name and occupation~~ names of all directors of the organization, other than an organization that is a securities dealer; and

(b) make reasonable efforts to obtain, and if obtained, record with the applicable date,

~~(b)~~ (i) the ~~name, address~~ names and ~~occupation~~ addresses of all persons who own, directly or indirectly, 25 per cent or more of the organization or of the shares of the organization; and

~~(5)~~ (ii) the names and addresses of all trustees and ~~shall include~~

~~(a)~~ the name, professional all known beneficiaries and ~~address~~ settlers of the ~~person providing the attestation;~~

~~(c)~~ (b) the signature of the person providing the attestation; ~~trust,~~ and

~~(d)~~ (c) (iii) in all cases, information ~~establishing the type ownership, control and number structure of the identifying document provided by the client, third party or instructing individual(s) organization.~~

(68) For A lawyer must take reasonable measures to confirm the purpose

efaccuracy of the information obtained under subsection (4), ~~a guarantor must be a person employed in one of the following occupations in Canada:~~7).

- (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]);~~
- (m) ~~veterinarian;~~
- (n) ~~peace officer;~~
- (o) ~~paralegal licensee in Ontario;~~
- (p) ~~nurse; or~~
- (q) ~~school principal.~~

Use of Agent

(79) A lawyer ~~may, and where an individual client, third party or individual~~

~~described in s. 3 clause (f)(ii) is not physically present and is outside of Canada, shall, rely on an agent~~ must keep a record, with the applicable date(s), that sets out

(a) the efforts made under paragraph 7(b), and

(b) information obtained and the measures taken to confirm the accuracy of that information obtained under section (7).

(10) If a lawyer is not able to obtain the information described referred to in subsection (2) to verify the person's7) or to confirm that accuracy of that information in accordance with subsection (8), the lawyer must

(a) take reasonable measures to ascertain the identity, which may include, where applicable, an attestation described in of the most senior managing officer of the organization; and

(b) determine whether

(i) the client's information in respect of their activities,

(ii) the client's information in respect of the source of the funds described in section 4, and

(iii) the client's instructions in respect of the transaction

are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule;

(c) assess whether there is a risk that the lawyer may be assisting in or encouraging fraud or other illegal conduct; and

(d) keep a record, with the applicable date, of the results of the determination and assessment under paragraphs (b) and (c).- treat the activities in respect of that organization as requiring ongoing monitoring and if necessary take the steps such monitoring may require, as described in sections 10 of this section, provided the lawyer and the agent have an agreement or arrangement in writingRule.

~~for this purpose.~~

~~(a) — 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

(11) A lawyer ~~shall~~must verify the identity of

- (a) a client who is an individual, and
- (b) the individual(s) authorized to provide and giving 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.

(12) 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~~unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Timing of Verification for Organizations

(13) A lawyer ~~shall~~must verify the identity of a client that is an organization ~~within 60 days of upon~~ engaging in or giving instructions in respect of any of the activities described in section 4-, but in any event no later than 30 days thereafter.

(14) Where the lawyer has verified the identity of a client that is an organization and obtained information pursuant to subsection ~~6(3(7))~~, the lawyer is not required to subsequently verify that identity or obtain that information, unless the lawyer has reason to believe the information, or the accuracy of it, has changed.

Record keeping and retention

7. (1) A lawyer ~~shall~~must obtain and retain a copy of every document used to verify the identity of any individual or organization for the purposes of ~~sections~~subsection 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~~must retain a record of the information, with the applicable date, and any documents obtained for the purposes of ~~sections 3~~section 3, subsection 6(7) and ~~6(3)~~subsection 10(2) and copies of all documents received for the purposes of ~~sections~~subsection 6(1) for the longer of

- (a) ~~(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) ~~(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~~section 3 and subsections 6(1), ~~(37)~~ or (10), a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

(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

Monitoring

10. During a retainer with a client in which the lawyer is engaged in or gives instructions in respect of any of the activities described in section 4, the lawyer must:

(1) _____ monitor on a periodic basis the professional business relationship with the client for the purposes of:

(a) determining whether

(i) the client's information in respect of their activities,

(ii) the client's information in respect of the source of the funds described in section 4, and

(iii) the client's instructions in respect of transactions

are consistent with the purpose of the retainer and the information obtained about the client as required by this Rule, and

(b) assessing whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or other illegal conduct; and

(2) _____ keep a record, with the applicable date, of the measures taken and the information obtained with respect to the requirements of paragraph (1)(a) above.

Duty to Withdraw after being retained

40-

11._____ (1) If while retained by a client, including when taking the steps required in section 10, a lawyer knows or ought to know that he or she is or would be assisting the client in fraud or other 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.

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

MODEL TRUST ACCOUNTING RULE

Definitions

“money” includes cash, cheques, drafts, credit card transactions, post office orders, express and bank money orders, and electronic transfer of deposits at financial institutions

1. A lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the lawyer or the lawyer’s law firm is providing.
2. A lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.