

*Federation of Law Societies  
of Canada*



*Fédération des ordres professionnels  
de juristes du Canada*

**DEPARTMENT OF FINANCE  
DEPOSIT INSURANCE REVIEW CONSULTATION**

**Submission of  
Federation of Law Societies of Canada**

**Ottawa, November 30, 2016**

## **The Federation of Law Societies of Canada**

1. The Federation is the national coordinating body of Canada's 14 law societies, mandated by provincial and territorial statutes to regulate the country's 117,000 lawyers, Quebec's 4,500 notaries and Ontario's nearly 8,000 licensed paralegals in the public interest. Among other activities, the Federation promotes the development of national standards, encourages the harmonization of law society rules and procedures, and undertakes national initiatives as directed by its members. The Federation communicates the views of its members on national issues such as safeguarding the right of the public to an independent legal profession, the protection of solicitor-client privilege and other issues relating to the administration of justice and the rule of law.

## **Submission Overview**

2. The Federation's brief submission touches on three issues raised in the consultation paper: the provisions for identification of beneficiaries of professional trust accounts; providing coverage for foreign currency deposits; and extending deposit insurance to cover temporary high balances.
3. The Federation submits that the existing by-law requiring members of the legal profession to identify the beneficiaries of the funds held in their trust accounts by alpha numeric identifiers rather than by name should be maintained. We recommend, however, that the wording of the English version of the by-law be amended to better identify the members of the legal profession to which it applies.
4. The Federation also submits that extending deposit insurance to cover foreign currency deposits, particularly US dollar deposits, would be consistent with the goal of protecting depositors.
5. Finally, it is our view that there would be merit in exploring the possibility of extending deposit insurance to cover temporary high balances arising from lump sum payments such as those resulting from real estate transactions, the payment of estates funds or the settlement of legal proceedings.

## **Background**

6. Legal professionals in Canada are governed by a comprehensive set of rules and regulations imposed and enforced by law societies to protect the public. These include the professional obligation to safeguard the confidentiality of client information and detailed financial accounting rules that require lawyers, Quebec notaries and Ontario paralegals to deposit all funds received in trust for clients into pooled or individual trust accounts.
7. Members of the legal profession are also bound to protect from disclosure all client information protected by solicitor-client privilege (professional secrecy in Quebec). The Supreme Court of Canada has repeatedly confirmed that solicitor-client privilege is

essential for the proper functioning of the justice system and must be as near absolute as possible. The courts have also held that there is a presumption that all information shared between clients and their legal counsel is privileged, including accounting information.

### **Identifying Beneficiaries**

8. Improving disclosure of beneficiary information to ensure that the Canada Deposit Insurance Corporation (“CDIC”) may quickly and accurately pay out insurance to beneficiaries when required is one of the matters under consideration in the review of the deposit insurance regime.
9. As the discussion paper notes, the CDIC by-laws contain special provisions for identifying beneficiaries of professional trusts. Pursuant to section 7 of the Canada Deposit Insurance Corporation Joint and Trust Account Disclosure By-Law (“Disclosure By-Law”), legal professionals are exempt from the requirement to provide the names and addresses of all beneficiaries of their trust accounts. In lieu of names and addresses, lawyers, Quebec notaries and Ontario paralegals are required to provide an alpha numeric identifier. Members of the legal profession are also required to maintain an up-to-date list of the names and addresses of the beneficiaries and the particulars of the amount or percentage of each beneficial interest.
10. The Disclosure By-Law was the subject of review and consultation in 2009 and was amended in 2011. The provision exempting legal professionals from the obligation to disclose the names and addresses of client beneficiaries was maintained following that review. In the submission of the Federation the Disclosure By-Law continues to achieve the important goal of ensuring that beneficial owners of trusts can be easily and accurately identified while ensuring that solicitor-client privilege and the confidentiality of client information are protected. In our view, it is vital that the exemption be maintained.
11. We note, however, that the English version of section 7(1) (c) refers to “a solicitor or partnership of solicitors, a law corporation, or a notary or partnership of notaries in the province of Quebec”. Although the by-law has been applied to all lawyers and Quebec notaries, the term “solicitor” may be understood by some to apply to only a segment of the legal profession. In most Canadian jurisdictions members of the legal profession (other than Quebec notaries) are known as either “lawyers” or “barristers and solicitors”. In our view it would be preferable if the term “solicitor” were replaced by either “lawyer” or “barrister and solicitor”.

### **Foreign Currency Deposits**

12. Legal professionals may hold funds on behalf of their clients and/or others in US Dollar trust accounts and in some circumstances the client may not have a choice as to whether the funds are held in such an account. This can occur where, for example, the terms of the agreement pursuant to which the funds have been deposited specify that

trust monies be deposited in a US Dollar account. The extension of deposit insurance coverage to such deposits would better protect depositors and as such would be consistent with the overarching purpose of the insurance regime.

### **Temporary High Balances**

13. One of the issues addressed in the consultation paper is the possibility of extending deposit insurance to cover temporary high balances such as those arising from real estate transactions, estates matters and divorce settlements. While recognizing the complexity of the issue, the Federation and its members submit that there would be merit in exploring the extension of deposit insurance to provide coverage for such balances.
14. We note that the funds involved in temporary high balances may in some cases represent all or most of an individual's net worth. Particularly in the case of real estate transactions, individuals typically must leave the money in a trust or other account pending completion of the transaction. Similar obligations may apply in other contexts. In those circumstances individuals have little or no capacity to mitigate the risk of temporarily maintaining a balance well in excess of the \$100,000 limit currently provided by deposit insurance. This distinguishes some temporary high balances from high balances in general. This inability to mitigate risk in certain situations may be a relevant consideration in any extension of insurance coverage.

### **Conclusion**

15. The Federation is pleased to have been provided with the opportunity to contribute to the review of the deposit insurance system in Canada and would be pleased to answer any questions about our submission.