

*Federation of Law Societies
of Canada*



*Fédération des ordres professionnels
de juristes du Canada*

**DEPARTMENT OF FINANCE
DEPOSIT INSURANCE REVIEW**

**Supplemental Submission of the
Federation of Law Societies of Canada**

Ottawa, December 21, 2017

1. The Federation of Law Societies of Canada (“the Federation”), on behalf of its member law societies, appreciates the opportunity to provide additional comments in response to the review of the deposit insurance system in Canada.

Background

2. 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.
3. In November 2016, the Federation submitted its views on the federal deposit insurance regime in response to the Department of Finance’s Deposit Insurance Review Consultations. That submission led to a meeting in April 2017 between representatives of the Federation and two representative law societies, and officials of the Department of Finance and the Canada Deposit Insurance Corporation (“CDIC”). Discussions at the meeting raised additional issues related to the identification of beneficiaries of professional trust accounts.
4. On December 14, 2017, representatives of the Department of Finance, the CDIC, the Federation and the two representative law societies met again to discuss proposed changes to CDIC policies and/or bylaws to address these issues. This submission is in response to those proposed changes.

Identification of Beneficiaries of Professional Trust Accounts

5. The Federation agrees with the assessment of the Department of Finance and the CDIC, that the current system for obtaining information to identify beneficiaries of pooled trust accounts is often ineffective and can yield inaccurate information. We recognize that the goal of the proposed changes is to improve both the process for collecting information and its accuracy, and we support that goal.
6. In the view of the Federation, the proposal to replace the current requirement for professional trustees to provide information once a year on the individuals on whose behalf they are holding funds, with a requirement to maintain up to date records regarding their beneficiaries is an appropriate and reasonable change. It is evident that this system, which would also require professional trustees, including lawyers, Quebec notaries and Ontario paralegals, to have the capacity to generate identifying information upon the failure of a financial institution, will be more efficient and will eliminate the current problem of out-of-date beneficiary information. This is particularly true given the indication from departmental officials that there would be no deadline for professional trustees to provide beneficiary information in the event of the failure of a member institution. We do, however, wish to raise two issues.

7. The first relates to the proposed requirement that trustees have the capacity to generate specified identifying information for beneficiaries in “a format compatible with CDIC’s DSR systems.” Provided the compatible formats include ones commonly used, for example Excel, and that the requirement relates only to *generating* not *maintaining* records in a compatible format, we see no difficulty with this requirement. To ensure that professional trustees understand the requirement and the required formats we would encourage the Department of Finance and the CDIC to share detailed information on the compatible formats as that information becomes available.
8. The Federation is, however, very concerned about the nature of the information a lawyer, Quebec notary or Ontario paralegal would be required to provide about the beneficiaries of their professional trust account in the event of institution failure.
9. As noted in our 2016 submission, pursuant to rules and regulations enacted by the law societies, legal professionals are required to protect the confidentiality of client information. They are also bound by law not to disclose information protected by solicitor-client privilege. The importance of protecting information shared between clients and their legal counsel has been repeatedly confirmed by the Supreme Court of Canada. The Court has also recognized that in some circumstances even the identity of a client may be privileged.
10. Under the proposal shared during our December 14th meeting, if an institution were to fail, professional trustees would be required to provide the names, addresses, and amounts/percentages for each individual with funds in any professional trust accounts with that institution. Lawyers, Quebec notaries and Ontario paralegals would have to obtain the consent of each client to disclose this information and we anticipate that the majority of clients would consent. Provided this disclosure requirement were accompanied by a regulatory or legislative provision recognizing that disclosure of the information for the purposes of claiming compensation under the insurance system does not constitute waiver of solicitor-client privilege, we agree that the proposed approach would be generally workable.
11. There may, however, be some clients who will not consent to the release of the proposed identifying information. In the view of the Federation, requiring a client to give up the protection of solicitor-client privilege as a condition of receiving compensation under the deposit insurance system would be inappropriate and of questionable legality.
12. The Federation recognizes that the CDIC must have confidence that compensation is being paid only to eligible beneficiaries and that no person is receiving more compensation than they are legally entitled to. While requiring the names and addresses of beneficiaries of professional trust accounts is one way to ensure that the information the CDIC has is accurate, in our submission it is not the only way.
13. It may be possible, for example, to permit legal counsel to identify any clients wishing to keep their identity confidential by way of an alpha numeric identifier. Legal counsel could also be required to obtain a sworn affidavit from each such client advising whether she or he has funds in any other professional trust account at the institution (to address the per category limits on compensation). While such an affidavit could not be disclosed (or

would have to be anonymized), the CDIC would be able to rely on counsel's undertaking, as an officer of the court, that they have obtained the affidavit from the client in question.

14. In the view of the Federation, this alternative, likely to be used only rarely, would strike an appropriate balance between the need to respect and preserve solicitor-client privilege and the CDIC's need to ensure that it has accurate beneficiary information.

Conclusion

15. The Federation is grateful to have been consulted on the proposed changes to the deposit insurance system discussed above and would be pleased to answer any questions you may have about the concerns we have raised.

