



Background Information

Anti-money laundering and terrorist financing initiatives of the Federation of Law Societies of Canada and Canada's 14 law societies

June 13, 2019

1. 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 Cash Transactions and Client Identification and Verification Model Rules (the "Model Rules") adopted in 2004 and 2008 respectively are in force in all Canadian law societies.
2. In 2018, these rules were updated by a working group of Federation and law society representatives. It is anticipated the updates will be implemented by all law societies by the end of this year.
3. Also in 2018, the Federation approved a Model Trust Accounting Rule that restricts the use of lawyers' trust accounts for purposes directly connected to the provision of legal services. A number of law societies already have such rules; the goal is to make the requirement consistent in all jurisdictions. It eliminates the possibility that members of the legal profession might use their trust accounts for purposes unrelated to the provision of legal services, which unnecessarily increases the risk of money laundering or other illegal activity even when the money in question is not cash.
4. In March 2015, the Supreme Court of Canada struck down certain provisions of Canada's *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and regulations pertaining to the legal profession. That decision concluded a 14-year legal battle between the Federation and the government of Canada over application of the federal anti-money laundering and terrorist financing regime to lawyers and Quebec notaries.
5. Law societies take their mandate to regulate the legal profession in the public interest seriously. The rules and regulations implemented by provincial and territorial law societies based on the Federation's model rules exist to address the conduct of legal counsel and to prevent unwitting involvement in money laundering or the financing of terrorism. Legal counsel are also required to abide by comprehensive rules of professional conduct that include provisions prohibiting them from knowingly assisting in or encouraging any unlawful conduct.
6. Measures to ensure that legal counsel maintain appropriate practice management systems and comply with law society regulations include annual reporting obligations, practice reviews and financial audits. Law societies also have extensive investigatory and disciplinary powers that include the ability to impose penalties up to and including disbarment when members fail to abide by law society rules and regulations.
7. The 2018 amendments to the Federation's model rules also added a requirement for legal counsel to make reasonable efforts to obtain and verify information on the beneficial owners of organizations and the beneficiaries of trusts. The amendments reflect the Federation's recognition of the value of capturing this information.

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8. The Federation sees the value for the fight against money laundering and the financing of terrorism of obtaining information on the beneficial owners of corporations and trusts and has been a vocal proponent of a creating a national public register of beneficial owners. Without publicly available information on beneficial owners, a mandatory requirement to obtain beneficial ownership information is unworkable. This proposal was included in the Federation's brief to the House of Commons Standing Committee on Finance for the Statutory Review of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*. (<https://flsc.ca/wp-content/uploads/2018/03/MONEYLaunderENMarch2018F.pdf>).
9. In that submission, the Federation urged the federal government to move forward promptly with legislative initiatives that would include the creation of a publicly accessible registry of beneficial owners. The Federation also urged the government to continue working with provincial and territorial governments toward similar amendments to the legislation in their respective jurisdictions. We believe this would be an important tool to help lawyers fulfill their obligations to identify or know their clients.
10. To facilitate cooperation and collaboration between the regulators of the legal profession and the federal government, in June 2019 the Federation and the Department of Finance established a joint working group that includes representatives of the Department of Finance, other federal government departments and agencies, the Federation, and the law societies of British Columbia, Newfoundland and Labrador, Ontario, and Québec.
11. The mandate of the Working Group is to explore issues related to money laundering and terrorist financing that may arise in the practice of law, to strengthen information sharing, and to tackle money laundering, terrorist financing and other serious crimes in a way that fits Canada's constitutional framework.

For more information about the Federation, please visit our web site at www.flsc.ca.

