



Federation of  
Law Societies  
of Canada

Fédération des ordres  
professionnels de juristes  
du Canada

## Anti-Money Laundering and Terrorist Financing Working Group

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# Guidance to the Legal Profession

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**Your Professional Responsibility to Avoid  
Facilitating or Participating in Money Laundering  
and Terrorist Financing**

February 2024

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## Chapter 1: About This Guidance

Money laundering and terrorist financing, both offences under the *Criminal Code*, are on the rise in Canada. Because of the risks posed by money laundering and terrorist financing, Canada has adopted a comprehensive federal legislative regime to prevent these crimes through the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (“PCMLTFA”) requiring designated individuals and institutions to collect and report to a federal government agency<sup>1</sup> information about financial transactions of their clients, including large cash and suspicious financial transactions. Money laundering and terrorist financing affect us all, and the Canadian government makes serious efforts to prevent and prosecute these criminal acts.

Like all people in Canada, legal professionals<sup>2</sup> are subject to the *Criminal Code*, but they are exempted from the federal legislative regime under the PCMLTFA due to constitutional principles that protect the rights of clients and the obligations of legal professionals within their confidential relationships. The PCMLTFA was originally applicable to lawyers and Quebec notaries; this led to litigation launched by the Federation of Law Societies of Canada (the “Federation”) and the Law Society of British Columbia, supported by the Canadian Bar Association, challenging the constitutionality of the legislation. The Supreme Court of Canada subsequently recognized that the provisions in the legislation requiring legal counsel to collect and retain information about their clients and their financial transactions and provide that information to government on demand, with expansive government powers to search law offices, provided inadequate protection for solicitor-client privilege and violated the *Canadian Charter of Rights and Freedoms*.<sup>3</sup> However, the legal profession must comply with significant, corresponding obligations to ensure they are not facilitating money-laundering and terrorist financing. These obligations are imposed on legal professionals through the regulatory regimes of Canadian law societies.

Lawyers, Quebec notaries, and paralegals in Ontario are obligated, amongst other duties, to identify and verify the identity of clients, to comply with limits on the amount of cash they may accept, to ensure that trust accounts are used only for the direct purpose of providing legal services, and to withdraw from representing a client if they know, or ought to know, that they would be assisting in criminal activity if they continue the representation. In this sense, the responsibilities of legal professionals go beyond the reporting and other duties of other professions and institutions in Canada under the PCMLTFA.

This Guidance, prepared by the Federation on behalf of all Canadian law societies, describes the responsibilities of Canada’s legal professions to ensure they are not facilitating money laundering and terrorist financing. It describes the context for money laundering and terrorist financing in Canada and the sources of the responsibilities to avoid it. The detailed Guidance, which includes red flags and real-life examples, sets out the components of the legal professional’s duties as contained in updated Model Rules approved on October 19, 2018 by the Federation, for adoption by all Canadian law

<sup>1</sup> The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC)

<sup>2</sup> In this Guidance, the term “legal professionals” includes lawyers, Quebec notaries and licensed paralegals in Ontario.

<sup>3</sup> *Canada (Attorney General) v. Federation of Law Societies of Canada*, [2015] 1 SCR 401, 2015 SCC 7 (CanLII).



societies. Additional resources appear at the end of the Guidance, and it is anticipated that over time, more will be added to this section for the benefit of legal professionals.

Avoiding participation in money laundering and terrorist financing is rooted in knowing your client: their identity, their financial dealings in relation to your retainer, and any risks arising from your professional business relationship with them. When working with corporate clients, knowing your client means taking additional steps to ascertain ownership and control of the corporation, and routinely assessing the accuracy of your knowledge about them. Not facilitating money laundering and terrorist financing also means refusing to accept, except in limited circumstances, more than \$7,500 in cash from clients or prospective clients. Finally, the fight against money laundering and terrorist financing requires you to be vigilant and exercise judgment about the use of your trust accounts, pursuant to established parameters.

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 professionals, and to prevent them from unwitting involvement in money laundering or terrorist financing. Legal professionals 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. Measures to ensure that legal professionals 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. Lawyers, Ontario paralegals, and Quebec notaries who wittingly participate in criminal activity are, of course, subject to criminal charges and sanctions.

While this Guidance discusses the legal profession's vulnerabilities related to money laundering and terrorist financing, these same vulnerabilities could lead to the profession's unwitting participation in other types of fraud or crime. It is important to understand that the duties and responsibilities contained in the Model Rules reflect the unique position of legal professionals in helping the public with their legal needs and in ensuring compliance with the law. By adhering to these fundamental principles, the legal profession helps to prevent all crime, and to maintain public trust in the justice system. Similarly, the Model Rules protect the right of citizens to independent legal counsel, and ensure that counsel can continue to protect the client's privilege.



## Chapter 2: Understanding the Problem

Money laundering and the financing of terrorist activities affect us all. When criminals launder their illicit funds through the purchase and sale of properties, it can inflate the selling prices, making it unaffordable for community members to purchase homes. When criminals launder their dirty funds through front companies and sell products at significantly lower prices, legitimate businesses may be unable to compete. When large amounts of criminal proceeds are invested into our economy, currency exchange and interest rates can become volatile. The consequences of money laundering and terrorist financing are vast and significant – it is incumbent on each of us to prevent these criminal offences.

Legal professionals are perceived as “gatekeepers” within money laundering and terrorist financing systems because of our unique role in facilitating financial transactions. Specifically, legal professionals may be used to:

- give an appearance of legitimacy to a criminal transaction;
- facilitate money laundering through the creation of a company or trust, and/or the purchase and sale of property; and
- eliminate the trail of funds back to a criminal through the use of a professional trust account.<sup>4</sup>

Because of the role they play in facilitating transactions, and the fact that communications for the purpose of obtaining legal advice are protected by solicitor-client privilege, legal professionals may be targeted by criminals. Legal professionals should thus be able to determine the potential money laundering or terrorist financing risks posed by a client, as well as the risks presented by the context of their services. Without such risk-based awareness, legal professionals may find themselves participating in criminal activity, whether knowingly, recklessly, or unintentionally.

### What is Money Laundering?

The Financial Action Task Force (“FATF”), an international, intra-governmental body combatting money laundering and terrorist financing, defines money laundering as the processing of criminal proceeds to disguise their illegal origin.<sup>5</sup> The *Criminal Code* similarly defines money laundering as the transfer, use, or delivery of property or proceeds with the intent to conceal or convert the property or proceeds, knowing that they were derived from criminal activity.<sup>6</sup>

In Canada, the offence of laundering the proceeds of crime in subsection 462.31(1) of the *Criminal Code*<sup>7</sup> includes an alternative standard of recklessness. Legal professionals

<sup>4</sup> The International Bar Association, the American Bar Association, and the Council of Bars and Law Societies of Europe, “A Lawyer’s Guide to Detecting and Preventing Money Laundering,” October 2014 at p. 24, available online: [https://www.anti-moneylaundering.org/AboutAML.aspx#The\\_Guide](https://www.anti-moneylaundering.org/AboutAML.aspx#The_Guide)

<sup>5</sup> Financial Action Task Force, “What is Money Laundering?” online: <http://www.fatf-gafi.org/faq/moneylaundering/>

<sup>6</sup> Section 462.31(1) (“Laundering proceeds of crime”), *Criminal Code*, R.S.C. 1985, c. C-46.

<sup>7</sup> 462.31 (1) Every one commits an offence who uses, transfers the possession of, sends or delivers to any person or place, transports, transmits, alters, disposes of or otherwise deals with, in any manner and by any



who are not alert to, or who ignore known warning signs and red flags could face criminal prosecution for money-laundering. Recent amendments to s. 462.31 expand on the nature of the recklessness standard.<sup>8</sup> The amendments provide that in certain circumstances, a court may infer the knowledge or belief or recklessness required in relation to the offence of laundering proceeds of crime and specify that it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence. These changes emphasize the need for legal professionals to conduct sufficient diligence with respect to client transactions to ensure that they do not willingly or unwittingly become involved in illegal activity or act recklessly with respect to money laundering.

Criminal proceeds are typically laundered through a three-stage process: placement, layering, and integration. In the placement stage, the launderer introduces the illegal profits into the financial system (for example, by depositing cash with financial institutions changing currency at currency exchanges, or depositing funds into lawyers trust accounts). In the layering stage, the launderer engages in a series of transactions to distance the funds from their source (for example, by creating trusts or shell companies, buying securities, or buying real estate). Finally, in the integration stage, the launderer integrates the funds into the legitimate economy, i.e. by investment into real estate or business ventures.<sup>9</sup> Money launderers may try to involve lawyers at any of these stages.

The FATF notes that money-laundering proceeds can be generated through a wide range of illegal activity, including illegal arms sales, smuggling, embezzlement, insider trading, and computer fraud schemes.<sup>10</sup> In the Canadian context, a 2015 Department of Finance report identified 21 profit-oriented crimes associated with money-laundering.<sup>11</sup> Those identified as posing a very high threat of money laundering include capital markets fraud, drug trafficking, mortgage fraud, and tobacco smuggling and trafficking. A high threat rating was given to such crimes as currency counterfeiting, human trafficking, illegal gambling, and robbery and theft. Experts have noted that those involved in such

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means, any property or any proceeds of any property with intent to conceal or convert that property or those proceeds, knowing or believing that, or being reckless as to whether, all or a part of that property or of those proceeds was obtained or derived directly or indirectly as a result of

(a) the commission in Canada of a designated offence; or

(b) an act or omission anywhere that, if it had occurred in Canada, would have constituted a designated offence.

<sup>8</sup> Section 462.31 of the Act is amended by adding the following after subsection (1):

**Prosecution**

(1.1) Subject to subsection (1.3), in a prosecution for an offence under subsection (1), it is not necessary for the prosecutor to prove that the accused knew, believed they knew or was reckless as to the specific nature of the designated offence.

**Inference**

(1.2) Subject to subsection (1.3), the court may infer that an accused had the knowledge or belief or demonstrated the recklessness referred to in subsection (1) if it is satisfied, given the circumstances of the offence, that the manner in which the accused dealt with the property or its proceeds is markedly unusual or the accused's dealings are inconsistent with lawful activities typical of the sector in which they take place, including business activities.

**Exception**

(1.3) Subsections (1.1) and (1.2) do not apply in cases where the accused is also charged with the designated offence.

<sup>9</sup> What is Money Laundering? *supra* note 2.

<sup>10</sup> *Ibid.*

<sup>11</sup> Finance Canada, *Assessment of Inherent Risks of Money Laundering and Terrorist Financing in Canada, 2015* at p. 19, online: <https://www.fin.gc.ca/pub/mltf-rpcf/mtf-rpcf-eng.pdf>



crimes range from the “unsophisticated, criminally inclined individuals, including petty criminals and street gang members, to criminalized professionals and organized crime groups.”<sup>12</sup>

## What is Terrorist Financing?

The FATF does not specifically define the term “terrorist financing.” Instead, they urge states to adopt the United Nations International Convention for the Suppression of the Financing of Terrorism (1999), which prohibits any person from providing or collecting funds in order to carry out an offence as defined in related United Nations treaties, or any other act intended to cause death or serious bodily injury, or to any other person not taking any active part in the hostilities in a situation of armed conflict, when the purpose of such act is to intimidate a population, or to compel a government or an international organization to do or to abstain from doing an act.<sup>13</sup>

Sections 83.02-83.04 of the *Criminal Code* define the terrorism financing offences. Collectively they prohibit the provision, collection and use of property to facilitate or carry out any terrorist activity.<sup>14</sup> In a 2015 report, the Department of Finance indicated that terrorist financing activities in Canada may include the payment of travel expenses, the procurement of goods, transferring funds to international locations through banks and other financial entities and the smuggling of bulk cash across borders.<sup>15</sup>

The FATF notes that terrorist financing can be challenging to detect for legal professionals without guidance on relevant typologies or unless acting on specific intelligence provided by the relevant authorities.<sup>16</sup> Because of this, legal professionals should consider consulting the reports regularly published by Canada’s Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) on terrorist financing trends and typologies.<sup>17</sup>

<sup>12</sup> *Ibid*, at p. 18.

<sup>13</sup> International Convention for the Suppression of the Financing of Terrorism, as adopted by the General Assembly of the United Nations in resolution 54/109 of 9 December 1999, online: <http://www.un.org/law/cod/finterr.htm>

<sup>14</sup> Section 83.01(1) (“definition of terrorist activity”), *Criminal Code*, R.S.C. 1985, c. C-46.

<sup>15</sup> *Supra* note 5 at p. 27.

<sup>16</sup> Financial Action Task Force, “Risk-Based Approach Guidance for Legal Professionals,” 23 October 2008 at p. 42, available online: <http://www.fatf-gafi.org/media/fatf/documents/reports/RBA%20Legal%20professions.pdf>

<sup>17</sup> FINTRAC Typologies and Trends Reports, available online: <http://www.fintrac-canafe.gc.ca/publications/typologies/1-eng.asp>





## Chapter 3: Identifying and Verifying the Identity of Clients

### Background to the Client Identification and Verification Rule

When retained to provide legal services, you must acquire basic knowledge about your clients and their financial dealings. The Model Rule requirements may be fulfilled by you, or any partner, associate or employee at your firm.

Legal professionals must identify each client, with limited exemptions. Identification is the process of obtaining and recording basic information about the client. Identification requirements differ slightly depending on whether your client is an individual or an organization. If your client is acting for or representing a third party, identifying information about that third party also must be obtained.

Identification and verification are two separate but related concepts. When you engage in or give instructions in respect of receiving, paying or transferring funds on behalf of a client you must also verify your client's identity. Verification is the process of obtaining information to confirm that the client is who or what they say they are. This involves reviewing independent source document(s) or information and comparing it to the actual client. The identity of a third party on whose behalf the client is acting must also be verified. You must also determine the source of the funds being dealt with.

For clients that are corporations, societies, or unregistered organizations, you are required to verify the identity of the person who instructs you on behalf of the organization. You are also required to make reasonable efforts to obtain information about beneficial owners – persons who own, directly or indirectly, 25% or more of the organization. In the event you are unable to do so, the Model Rule asks you to exercise diligence in determining and assessing potential risks associated with those clients.

Overall, the client identification and verification requirements, as stated in section 2 of the Model Rule, are part of your obligation to know your client, and ensure that you understand the intent and purpose of the legal services for which you have been retained. Reference should be made to *Model Code of Professional Conduct* Rules 3.1-2 (Competence), 3.2-1 (Quality of Service), 3.2-7 (Dishonesty, Fraud by Client or Others), and 3.2-8 (Dishonesty, Fraud when Client an Organization) including their respective commentaries, which elaborate on the standards expected of legal professionals in relationships with clients. The *competent* legal professional, as defined in Rule 3.1-1 is one who, amongst other things, investigates facts, identifies issues, ascertains client objectives, considers possible options, and develops and advises the client on appropriate courses of action. A legal professional's obligation to provide the requisite quality of service mirrors competent service - this includes communicating effectively with the client and ensuring, where appropriate, that all instructions are in writing or confirmed in writing.

*Model Code* Rule 3.2-7 and section 11(1) of the Client Identification and Verification Model Rule prohibit legal professionals from knowingly assisting in any illegal conduct or doing or omitting to do anything the legal professional knows or ought to know will assist with a crime. The prohibition means being vigilant when engaged in services involving



financial transactions. When suspicions or doubts arise about whether the activities of a legal professional might be assisting in crime or fraud, the obligation is to make reasonable inquiries to obtain information about the subject matter and objectives of the retainer and record it, and to consider whether withdrawal is required. By complying with the Model Rule and the *Model Code*, you will provide the appropriate services to clients, managing both their expectations and your duties, in a responsible and professional way.<sup>18</sup>

## Guidance to the Client Identification and Verification Rule

### Exemptions

Not all client relationships are captured by the Model Rule. For example, if you only provide legal services to your employer as in-house or corporate counsel, you are exempt from the requirements to identify the client and to verify the client's identity. Similarly, if you provide legal services through a duty counsel program you are exempted from the verification requirements, except when engaging in, or giving instructions in respect of, the receiving, paying, or transferring of funds. You also are exempted if you are engaged to act as an agent by another legal professional, or when another legal professional has referred a matter to you, provided the other legal professional has complied with the identification and verification requirements.

Other exemptions apply when the funds are from certain sources. The *Model Rule* does not apply to funds received by a legal professional when those funds are:

- from the trust account of another legal professional;
- paid or received to pay a fine, penalty or bail or for professional fees; disbursements and expenses;
- paid by or to a financial institution, public body, or reporting issuer; or
- an electronic transfer of funds (EFT).

The Model Rule's definition of "electronic funds transfer" specifies that only EFTs conducted by and received at financial institutions headquartered and operating in a country that is a member of the FATF is covered by the exemption. Further, neither the sending nor receiving account holders may handle or transfer the funds. The Model Rule requires that the EFT transmission records contain a reference number, the date, transfer amount, currency, and the names of the sending and receiving account holders and the financial institutions conducting and receiving the EFT. This exemption will likely be subject to future review, as current developments or changes in the financial landscape may warrant a change in this approach.

The previous version of the Model Rule had exemptions for funds paid pursuant to a court order and paid or received pursuant to the settlement of any legal or administrative proceedings. Those exemptions have been removed. In the common situation, the funds in these circumstances are paid from one party to another and to the extent the funds flow through the legal professional's trust account, there is a risk that these types of

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<sup>18</sup> This portion of the Guidance is informed by guidance published by FINTRAC, found at: <http://www.fintrac-canafe.gc.ca/guidance-directives/1-eng.asp>



payments could be in aid of schemes to launder money. To the extent that funds are paid into court as seized funds under forfeiture legislation and then released by the court pursuant to judicial order, it is suggested that these funds would fall under the exemption relating to a law enforcement agency or other public official acting in their official capacity.

## Identification Requirements

You must identify all clients regardless of the nature of the legal services you are providing, subject to limited exemptions. You are not required to identify your client when providing services to your employer as in-house counsel, when acting as an agent for another legal professional, or when providing legal services to a client referred by another legal professional who has already identified the client. The identification requirements also do not apply when you are acting ad duty counsel.

## Identifying Individuals

When retained by an individual, you must identify the client and record the client's full name, home address and home telephone number, occupation(s), and the address and telephone number of the client's place of work or employment.

## Identifying Organizations

When retained by an organization, you must identify it by recording its name, business address and business telephone number, incorporation or business incorporation number, the general nature of its type of business or, and the name, position, and contact information of the individual who is authorized to give you instructions on behalf of the organization with respect to the matter for which you are retained.

## Clients Acting For, or Representing, Third Parties

In some circumstances, you may be retained by a client who is acting for, or representing, a third party. In such cases, you must identify the third party, whether it is an individual or an organization.

A third party is a person or organization who instructs another person or organization to conduct an activity or financial transaction on their behalf. When determining whether a third party is giving instructions, it is not about who owns or benefits from the funds, or who is carrying out the transaction or activity, but rather about who gives the instructions to handle the funds or conduct a transaction or particular activity. Ask questions to find out if someone other than your client is pulling the strings. If you determine that the individual or organization who engages you is acting on someone else's instructions, that someone else is the third party. Determine the relationship between the client and the third party.



## Verifying Identity

### Individuals

The following sections describe the options available to you when you are required to verify the identity of individual clients or third parties. Verification of identity is required when in the course of providing legal services, you engage in or give instructions in respect of the receiving, paying or transferring of “funds”. Note that “funds” is widely defined and would include the transfer of securities. While much of this section describes how to verify a client in a face-to-face situation, you may choose instead to use an agent as described later in this section.

#### Government-issued Documentation

You may rely on a valid, authentic and current federal, provincial or territorial government-issued document containing the individual’s name and photograph. See Appendix A for examples of acceptable government-issued documents. A foreign government issued photo identification document is acceptable if it is equivalent to a Canadian issued photo identification document listed in Appendix A. Note, however, that photo identification documents issued by any municipal government, whether Canadian or foreign, are not acceptable.

A document is authentic if it is genuine and has the character of an original, credible and reliable document. For example, an original physical government-issued photo identification document is authentic.

#### **Relying on the physical document:**

When relying on the physical document, you or your agent must examine it in the presence of the individual. The document must show the individual’s name, include a photo of the individual, and have a unique identifier number. You must ensure that the document is issued by a competent authority, that it is valid and current and that the individual’s name and photograph match. It is not acceptable to view photo identification online through a video conference.

#### **When the individual is not physically present:**

You or your agent may rely on government-issued identification document if you have a process in place to authenticate the document and to determine that it is valid and current. To authenticate the document, certain technologies can be used. Available through various commercial identity verification platforms, these include technologies such as optical character recognition data capture (a program that extracts data from scanned documents, camera images, etc.) and biometric face matching, which process the information and are capable of determining the document’s authenticity. Using the technology would involve:

- asking the individual to scan their government-issued photo identification document using the camera on their mobile phone or electronic device; and
- applying the technology to compare the features of the scanned document against known characteristics (for example, size, texture, character spacing, raised lettering, format/design), security features (for example, holograms,



barcodes, magnetic strips, watermarks, embedded electronic chips) or markers (for example, logos or symbols) to be satisfied that it is an authentic document as issued by the competent authority.

To determine that the authenticated document is valid and current, and that the name and photo are those of the individual providing the document, you could:

- participate in a live video call with the individual and compare the name and the features of the live video image to the name and photo on the authenticated document; or
- ask the individual to take a "selfie" using the camera on their mobile phone or electronic device and use an application to apply facial recognition technology to compare the features of that "selfie" to the photo on the authenticated document. You would also need a process to compare the name on the document with the name provided by the individual

### Credit Files

Alternatively, you can verify an individual's identity by relying on information that is in their credit file if that file is located in Canada and has been in existence for at least three years. The information in the credit file must match the name, date of birth and address provided by the individual. If any of the information does not match, you must use another method to verify the individual's identity.

Note that a credit assessment is not needed to identify an individual through a credit file. Equifax Canada and TransUnion Canada are Canadian credit bureaus that provide credit file information for identification purposes.

To verify an individual's identity using information in their credit file, you must obtain the information directly from a Canadian credit bureau or a third-party vendor authorized by a Canadian credit bureau to provide Canadian credit information. You cannot rely on a copy of the credit file if provided by the individual. It is acceptable, however, to use an automated system to match the individual's information with the credit file information.

To rely on a credit file search, the search must be conducted at the time of verifying the individual's identity. An historical credit file is not acceptable. To be acceptable as a single source for verification of identity, the credit file must match the name, address, and date of birth that the individual provided, be from Canada, and have been existence for at least three years.

The individual does not need to be physically present at the time you verify their identity through a credit file.

### The Dual Process Method

You can also use the dual process method to verify a client's identity, by relying on any two of:

- information from a reliable source that contains the individual's name and address;



- information from a reliable source that contains the individual's name and date of birth; and/or,
- information containing the individual's name that confirms they have a deposit account or credit card or other loan amount with a financial institution.

If using the dual process method, the information referred to must be from different sources. Neither the client (or individual instructing on behalf of the client), nor the legal professional (or the professional's agent) may be a source. The information may be found in documents from these sources or may be information that these sources are able to provide. Information refers to facts provided or learned about an individual and can come from various places, in contrast to a document, which refers to an official record that is either written, printed or electronic that provides evidence or facts.

If a document is used, you or your agent must view a valid, original and current document. Original documents do not include those that have been photocopied, faxed or digitally scanned. If information is used, it must be valid and current. Information found through social media is not acceptable.

The individual does not need to be physically present at the time you verify their identity through the dual process method.

A reliable source is an originator or issuer of information that you trust to verify the identity of the client. To be considered reliable under the Model Rule, the source should be well known and considered reputable. The source providing the information cannot be you, your client, or the individual who is being identified; the source must be independent. For example, reliable sources can be the federal, provincial, territorial and municipal levels of government, Crown corporations, financial entities or utility providers.

If a document is used as part of the dual process method, you must ensure that you see the original paper or electronic document, and not a copy. The original document is the one that the individual received or obtained from the issuer either through posted mail or electronically. For example, an original paper document can be a utility statement mailed to an individual by the utility provider, and it can also be a document that the individual received through email or by downloading it directly from the issuer's website. The document must appear to be valid and unaltered in order to be acceptable; if any information has been redacted, it is not acceptable.

An individual can email you the original electronic document they received or downloaded, show you the document on their electronic device (for example, a smartphone, tablet, or laptop), print the electronic document received or downloaded from the issuer, or show it to you in the original format such as .pdf (Adobe) or .xps (Microsoft viewer). In practical terms, this means that an individual can:

- show you their original paper utility statement in person or by posted mail;
- email or show you on their electronic device an electronic utility statement downloaded directly from the issuer's website;
- print and show you the statement they downloaded from the issuer; or
- email or show you on their electronic device a mortgage statement received by email from the issuer.





See Appendix B for examples of information and documents that can be used for the dual process method of verifying identity.

### Verifying the Identity of Children

The Model Rule requires you to take different steps to verify the identity of an individual who is a child.

If verifying the identity of an individual who is under 12 years of age, you must verify the identity of one of the child's parents or guardians.

If verifying the identity of an individual client who is at least 12 years of age but not more than 15 years of age, you can rely on any two of:

- information from a reliable source that contains the individual's parent or guardian's name and address;
- information from a reliable source that contains the individual's parent or guardian's name and date of birth; and/or,
- information containing the individual's parent or guardian's name that confirms the parent or guardian has a deposit account, credit card, or other loan amount with a financial institution.

If that is not possible, you can rely on information from a reliable source that contains the name and address of the child's parent or guardian and a second reliable source that contains the child's name and date of birth. For example, if the child has a passport, that can be used to ascertain their identity directly; if not, you can rely on the parent's driver's license to verify their common address, and use the child's birth certificate to verify the child's name and date of birth.

### Use of an Agent

You may rely on an agent to verify the identity of an individual, including in circumstances where the individual is not physically present in Canada.

An agent can be utilized at any time. You may choose to use an agent if the client or third party is elsewhere in Canada and the method of verification is the use of a federal, provincial or territorial government-issued document containing the client's name and photograph, which must be provided in the client's presence. Other methods, as indicated above, do not require the individual's physical presence and as such an agent may not be necessary. If the client or third party is not physically present in Canada, an agent must be relied upon to verify the individual's identity.

The Model Rule requires that you and your agent have an express agreement or arrangement in writing for such purpose. The agreement need not be in any particular form, and it is up to you to decide on the level of formality required. It may take the form of a letter or email, for example. The agreement should set out in sufficient detail the purpose of the agreement and the expectations of the agent. As the responsibility to verify identity is yours, you – not the client or third party – must choose and retain the agent.



The identity verification information provided by the agent should include the information that you would have obtained and documented had you verified identity through one of the methods described above. As such, when using an agent, your records should include, through the agreement itself and the report from the agent:

- the full name of the agent who verified the individual's identity;
- the agent's status or occupation and business address;
- the client identification method the agent used;
- copies of the information and documents obtained by the agent to verify the individual's identity; and,
- the date on which the agent verified the individual's identity.

You should also note the date you received the verification information from the agent, as this relates to the currency of the identification information that you use and the time within which the verification must occur under the Model Rule.

The information on the client's identity that you obtain from the agent must match what the individual has provided to you when you obtained their basic identification information. You must satisfy yourself that the information is valid (authentic and unaltered) and current (not expired) and that your agent verified the individual client's identity through the methods prescribed by the Model Rule. You may also rely on an agent's previous verification of an individual client if the agent was, at the time that they verified the identity, acting in their own capacity or acting as an agent under an agreement or arrangement in writing with another legal professional who is similarly required to verify identity under the Model Rule.

The Model Rule does not specify who may act as an agent. However, given the responsibilities of the agent, you should ensure that the person engaged is reputable, can be relied upon to understand what is required, can capably carry out the required work to verify identity and will provide the information they have obtained as required under the Model Rule.

## Timing for Verifying the Identity of Individual Clients

You are required to verify the identity of an individual (client or third party) upon being retained to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer. You are not subsequently required to verify that individual's identity unless you have reason to believe the information, or the accuracy of it, has changed.

## Organizations

When retained by an organization to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer, you must take certain specified steps to verify the client's identity. These additional requirements apply to all organizations with the exception of "financial institutions", "public bodies", and "reporting issuers", as defined in the Model Rule. The requirements to verify the identity of an organization include the requirement to verify the identity of the





individual(s) authorized to give instructions on behalf of the organization for the matter for which you are retained.

If retained by a client who is acting for, or representing, a third party that is an organization, you are required to obtain information about that organization, and if applicable, verify the third party's identity, pursuant to your obligation to verify information about clients that are organizations.

In verifying an organization's identity, you have a few options available to you as outlined in the Model Rule. If the organization is created or registered pursuant to legislative authority, you may rely on written confirmation from a government registry as to the existence, name and address of the organization. Documents that you can rely on to confirm the existence of a corporation are: the corporation's certificate of corporate status; a record filed annually under provincial securities legislation; or any other record that confirms the corporation's existence, such as the corporation's published annual report signed by an independent audit firm, or a letter or notice of assessment for the corporation from a municipal, provincial, territorial or federal government. If the organization is not registered in any government registry, you may rely on documents that establish or create the organization; you can rely on a partnership agreement, articles of association, or any other similar record that confirms the entity's existence. You cannot rely on an agent to verify the identity of an organization.

If an electronic version of a record is used to verify the existence of an organization, you must keep a record of the:

- corporation's registration number or the organization's registration number;
- type of record referred to; and
- source of the electronic version of the record.

For example, a corporation's name and address and the names of its directors can be obtained from a provincial or federal database such as the Corporations Canada database, which is accessible from [Innovation, Science and Economic Development Canada](#) website. This information may also be accessed through a subscription to a corporation searching and registration service.

## Ascertaining the Beneficial Ownership of an Organization

Except in the case of an organization that is a securities dealer, you must obtain and record, with the applicable date, the names of all directors of the organization. You are also required to make reasonable efforts to obtain information about the beneficial owners of the organization and about the control and structure of the organization. Identifying beneficial ownership is important in order to remove anonymity and identify the actual individuals behind a transaction. The concealment of the beneficial ownership information of accounts, businesses and transactions (i.e. the persons who own 25% or more) is a technique used in money laundering and terrorist activity financing schemes. Collection and confirmation of beneficial ownership information is an important step in knowing the client and ensuring that the lawyer's work on the transaction is not in aid of money laundering and terrorist financing activity.



Beneficial owners are the actual individuals who are the trustees or known beneficiaries and settlors of a trust, or those who directly or indirectly own or control 25% or more of an organization, such as a corporation, trust or partnership. Another organization cannot be considered the ultimate beneficial owner; the information you must try to obtain is the identity of the actual individuals who are the owners or controllers of the other organization. The purpose of this requirement is for you to obtain sufficient information about the organization's structure so that you know who effectively owns and controls the organization.

The Rule asks you to meet the standard of reasonable efforts to obtain the information. This means applying sound, sensible judgment. Reasonable efforts include searching through as many levels of information as necessary to identify those individuals. In making reasonable efforts to ascertain beneficial ownership, it is important to understand that the names found on legal documentation may not represent the actual owners of an organization. You must exercise judgment in discerning the reasonable efforts that are appropriate for each distinct situation to confirm the accuracy of information obtained, while also considering the risk associated with each situation.

For example, consider the situation where a corporation is governed by a board of directors: you must ascertain both ownership and control of the corporation. You will need to obtain information on the shareholders who own 25% or more of the organization, as they must be recorded as beneficial owners. However, you must also obtain information about the board of directors, who has control of the organization. Once you have obtained information about both shareholders and corporate directors, the Rule also requires you make reasonable efforts to confirm the accuracy of the information pertaining to both ownership and control of the organization.

You may obtain information establishing beneficial ownership, as well as the required control and structure information, from the organization, either verbally or in writing. For example, the organization can:

- provide you with official documentation;
- advise you on the beneficial ownership information, which you can then document for record-keeping purposes; or
- fill out a document that provides the information.

Where the identity of those who own and those who control an organization is not the same, you must consider the ownership and control exercised by both. It is not sufficient to identify only the owners of an organization or those who control it; you must make reasonable efforts to identify both. Remember that you are required to obtain the names and addresses of only those persons who own or control 25% or more of the organization.

If referring to documents or records, the accuracy of the beneficial ownership, as well as ownership, control and structure information related to the organization, may be confirmed by referring to records, such as the:

- Minute book;
- Securities register;
- Shareholders register;



- Articles of incorporation;
- Annual returns;
- Certificate of corporate status;
- Shareholder agreements;
- Partnership agreements; or
- Board of directors' meeting records of decisions.

It is possible for one of these documents to be used to satisfy the two distinct steps, namely to obtain the information and to confirm the accuracy of it. You can also conduct an open-source search, or consult commercially available information. In the case of a trust, the accuracy of the information can be confirmed by reviewing the trust deed, which will provide information on the ownership, control and structure of the trust.

Legal professionals should use their judgment to assess whether the documentation is appropriate. Where possible, official documents, such as a share certificate, should be used to confirm the beneficial ownership information obtained. If no official document exists to confirm accuracy, a signed attestation would be acceptable.

It may not always be possible for you to determine full information totaling 100% of beneficial ownership. For example, a corporation may have several hundred or thousands of shareholders. In these cases, your best efforts might be obtaining general information about the ownership of an organization, which may or may not include the names of the owners with a breakdown of percentages owned.

You must set out the information obtained in a dated record, along with the measures taken to try to confirm the accuracy of that information is required.

If despite your best efforts you are unable to obtain information about the directors, shareholders, and owners of the organization, you must then take reasonable measures to ascertain the identity of the most senior managing officer of the organization, and assess the organizational client's activities in the context of any risks that the transaction(s) may be part of fraudulent or illegal activity. These obligations are responsive to concerns that arise when information cannot be obtained. If the organization's structure is more opaque than transparent, this may be a warning that the organization could be facilitating criminal or other illegal activity.

In ascertaining the identity of the senior managing officer of an organization, you should be aware that this may include, but is not limited to, a director, chief executive officer, chief operating officer, president, secretary, treasurer, controller, chief financial officer, chief accountant, chief auditor or chief actuary, or an individual who performs any of those functions. It may also include any other individual who reports directly to the organization's board of directors, chief executive officer or chief operating officer. In the case of a partnership, the most senior managing officer can be one of the partners. In the case of a trust, the senior managing officer of a trust is the trustee, that is, the person who is authorized to administer or execute on that trust.

The reasonable measures standard ultimately requires you to exercise judgment about the potential risks associated with acting for an organizational client whose ownership, control or structure may not be entirely known to you. Because of this, along with ascertaining the identity of the most senior managing officer, you are also required to



determine whether the client's information in respect of their activities, the client's information in respect of the source of funds, and the client's instructions in respect of the transaction are consistent with the purpose of their retainer and the information you have obtained about them. You must assess whether there is a risk that you are assisting in, or encouraging, dishonesty, fraud, crime or illegal conduct. Finally, you are obligated to keep a record, with the applicable date, of the results of these assessments.

## Timing for Verifying the Identity of Organizations

The Model Rule requires you to verify the identity of an organization upon being retained to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer. In no case may the verification occur more than 30 days after you have been retained. You are not subsequently required to verify that same identity unless you have reason to believe the information, or the accuracy of it, has changed.

## Information on the Source of Client Funds

In addition to verifying clients' identities when engaging in, or giving instructions in respect of, receiving, paying or transferring funds on behalf of a client, legal professionals are also required to obtain information about the source of the funds relating to the retainer. This requirement applies to both individual and organizational clients.

The rule requires you to inquire about the expected source and origins of the funds related to the legal services to be provided. This may be apparent from the information obtained from the client for the retainer. In general, you should make sufficient inquiries to assess whether there is anything that suggests the proposed transaction is inconsistent with the client's apparent means, and the circumstances of the transaction.

In making this assessment, depending on the circumstances, you may wish to consider questions such as:

- Is someone other than the client providing information about the source of funds?
- Is the disclosed source consistent with the knowledge about the client's profile and activity?
- Is there anything unusual about the source of the funds in the context of the transaction?

For record-keeping purposes, you should also retain supporting documents that relate to how you determined the source of funds.



**Consider these red flags about the source of funds:**

- Funds are from, or are sent to, countries with high levels of secrecy;
- The client is not located near you and is asking for types of services that are not common for you to provide, or outside your area(s) of law entirely;
- The client expresses a sense of great urgency and asks you to cut corners;
- The funds received are inconsistent with the client's occupation or socio-economic profile.

## Monitoring the Relationship

The Model Rule requires you to exercise vigilance about client relationships that involve the receipt, transfer, or payment of funds. As such, when retained by an individual or organizational client to engage in, or give instructions in respect of, receiving, paying or transferring funds other than an electronic funds transfer, you must monitor the professional business relationship on a periodic basis. This means that during the retainer you must periodically assess whether the client's information in respect of their activities and the source of their funds are consistent with the purpose of the retainer and the information about the client that you have obtained under the rule. You also need to assess whether there is a risk that you might be assisting in fraud or other illegal conduct. The Model Rule requires that you keep a dated record of your client monitoring measures, which may include the steps taken and any information obtained.

It may be useful to conceive of your monitoring requirement as a periodic check-in with a client with whom you have an established, long-term relationship. In other circumstances, the monitoring requirement may be triggered when your client provides you with new facts about their activities or source of funds, or when you are faced with unexpected client behavior.

You should use your discretion in defining the frequency of the monitoring. It will depend on the client, the nature of the work, the anticipated duration of the retainer and the services provided. The frequency of monitoring activities may be determined by any risks you believe arise from the retainer with the client in the context of the requirements of the Model Rule. The responsibilities are similar to those outlined in commentary to Model Code of Professional Conduct Rule 3.2-7, which set out your obligations not to engage, or to assist a client in engaging, in criminal activity.<sup>19</sup>

<sup>19</sup> [1] A legal professional should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.

[2] A legal professional should be alert to and avoid unwittingly becoming involved with a client or others engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these and other criminal activities may be transactions for which legal professionals commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.

[3] If a legal professional has suspicions or doubts about whether he or she might be assisting a client or others in dishonesty, fraud, crime or illegal conduct, the legal professional should make reasonable inquiries



On occasion, ongoing monitoring may require taking additional, enhanced measures. This might include:

- obtaining additional information about your client (e.g. occupation, assets, information available through public databases, Internet, etc.);
- obtaining information on the source of funds or source of wealth of your client;
- obtaining information on the reasons for intended or conducted transactions;
- gathering additional documents, data or information; or taking additional steps to verify the documents obtained;
- flagging certain activities that appear to deviate from expectations; or
- reviewing transactions against the usual processes and procedures for such transactions relevant to the legal work for which you are retained.

## Record-keeping and Retention

As noted above, the Model Rule requires you to create and maintain certain records and to date those records. This includes a record of information that identifies each client. Where the retainer with the client involves the receipt, payment or transfer of funds, you must also keep records that contain;

- Information that identifies the source of funds;
- Copies in either paper or electronic format of every document used to verify the identity of the client and any third party;
- Information and any related documents on the directors, owners, beneficial owners and trustees, as the case may be, of an organizational client;
- Information and any related documents on the ownership, control and structure of an organizational client;
- Information and any related documents that confirm the accuracy of the information on directors, owners, beneficial owners and trustees and the ownership, control and structure of an organizational client; and,
- Measures taken and information obtained respecting your monitoring of the professional business relationship with the client.

Client identification and verification of identity records, as well as your records of having taken reasonable measures to obtain beneficial ownership of an organizational client and of your monitoring responsibilities, must be kept for the duration of the client relationship, or for a period of at least six years following the completion of the work for which you were retained, whichever is longer.

## Duty to Withdraw Representation

At the core of the Model Rule is the professional responsibility not to participate in, or facilitate, money laundering or terrorist financing.

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to obtain information about the client or others and, in the case of the client, about the subject matter and objectives of the retainer. These should include verifying who are the legal or beneficial owners of property and business entities, verifying who has the control of business entities, and clarifying the nature and purpose of a complex or unusual transaction where the purpose is not clear. The legal professional should make a record of the results of these inquiries.



You must withdraw from representation of a client if, in the course of verifying that client's identity, or monitoring your professional business relationship, you know or ought to know that you are, or would be, assisting a client in fraud or illegal conduct.





## Chapter 4: Limitations on Accepting Cash from Clients or Third Parties

### Backgrounder to the “No Cash” Rule

There have been limits on amount of cash you may receive from a client since the Model Rule on Cash Transactions (known as the “No Cash” rule) was adopted in 2004. Recent amendments have been made to clarify the \$7,500 threshold for accepting cash and the exceptions to the rule. There is also a more robust definition section, explaining terms used in the rule.

### The \$7500 Threshold

The rule prohibits you from accepting more than \$7,500 in cash in respect of one client matter under all circumstances, with limited exception as discussed below. The \$7500 threshold applies whether you receive the money in one payment or through aggregate or instalment payments. It also applies whether the cash is received from the client or a third party providing it on behalf of the client.

**Consider the following example:** A legal professional is acting for a personal representative of an estate who has discovered cash amongst the deceased’s possessions and wants the legal professional to deposit the funds in her trust account (the legal professional under the retainer is controlling the estate funds). If the client finds \$2,000 in a safety deposit box, that may be deposited in the trust account. If the client finds an additional \$8,000, that entire amount cannot be deposited as it would be an aggregate of \$10,000. In such a circumstance it would be appropriate to advise the client to:

- open an estate account and deposit the cash into that account; or
- suggest that the client use the cash to get a bank draft payable to the legal professional’s firm in trust.

Under the rule, legal professionals:

- cannot accept more than \$7,500 cash on a client matter even if there is more than one client on the file. The limit applies with respect to the client matter despite the number of clients.
- cannot accept more than \$7,500 from a client if the cash is tendered incrementally for a matter. It is, therefore, important to track receipt of cash to ensure the total received on the client matter does not exceed \$7500.
- can accept greater than \$7,500 cash from a client for three unrelated matters but only if the amount of cash provided for each individual matter is \$7,500 or less.





'Cash' is defined in the rule and includes Canadian coins or banknotes and those of other countries. Note that bank drafts, money orders, electronic or wire transfers of funds are not considered cash for the purposes of the rule.

## Foreign Currency

If you are accepting cash in a foreign currency, be aware that under Section 2 of the rule the currency is deemed to be the equivalent of Canadian dollars at the official conversion rate of the Bank of Canada for the foreign currency in effect that day, or on the most recent business day preceding the day on which you receive or accept the cash if the day it is received or accepted is a holiday.

If the amount of foreign currency as converted is greater than \$7,500 you are prohibited from accepting it unless one of the exceptions applies.

As more fully discussed below, you should ensure that you and your staff are familiar with the rule, including the treatment of foreign currency.

## Application of the Rule and Exceptions

It is important to understand that the rule applies not only to receiving cash from clients, but to the circumstances in which you receive cash on behalf of clients. This means that the rule applies when, on behalf of a client, you engage in or give instructions about receiving or paying funds, purchasing or selling securities, real properties or business assets or entities and transferring funds by any means. 'Funds' are defined in the rule as cash, currency, securities and negotiable instruments or other financial instruments that indicate the person's title or right to or interest in them.

There are limited exceptions to the rule limiting the cash you may receive in relation to a client matter. You may receive more than \$7500 in cash in connection with the provision of legal services

- from a financial institution or public body,
- from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity,
- to pay a fine, penalty, or bail, or
- for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.

Note that the requirement to refund in cash received for fees, disbursements or expenses applies only when you have received more than \$7,500 in cash. Again, 'financial institution', 'public body', 'professional fees', 'disbursements' and 'expenses' are all defined terms in the rule.

The rule covers a broad range of activities. Careful consideration is required before determining that an exception applies. When accepting cash for professional fees, disbursements, expenses or bail, it would be prudent for you to:



- consider the purpose for which cash is received, and document the circumstances and any client instructions;
- ensure that the amount received for a retainer is commensurate with the services to be provided (i.e. do not accept a \$50,000 retainer for a \$5,000 matter);
- ensure that you keep appropriate records so that, if cash in excess of the limit is received for a retainer but the client later retains new counsel or the first retainer is otherwise terminated, any refund is paid in cash; and
- ensure that appropriate accounting systems are in place to document and track the cash transactions, in particular when making a deposit of mixed cash and non-cash funds into trust; this could lead to difficulty in monitoring use.

## Suggestions for Implementing the Rule in Your Workplace

The following are suggested procedures to assist in implementing the rule in your legal practice:

- Inform staff about the rule and what to do if a client unexpectedly shows up at the office with cash;
- Ensure that file opening procedures include a requirement to comply with the rule, in particular by requiring that you or your colleagues confirm each cash deposit in the trust accounts;
- Ensure that trust accounting procedures require confirmation of rule compliance before paying money out of trust;
- Appoint someone in the firm to ensure that professional and support staff keep up to date with any rule changes;
- Record any exemption from the “No Cash” rule; and
- Provide information about the rule to new and existing clients in retainer letters, on the firm website, and in mail inserts.

The rule also specifies record keeping requirements for cash transactions. Fully complying with these requirements prevents issues arising in the treatment of cash transactions in your practice.



## Chapter 5: Proper Use of Your Trust Account

### Background to the New Trust Accounting Rule

A new Model Rule now restricts the use of trust accounts to transactions or matters for which the legal professional or the legal professional's firm is providing legal services. This new model rule is a significant control that will help prevent the misuse of trust accounts, as it prohibits the use of your trust account for purposes unrelated to the provision of legal services.

The regulatory experience of law societies has shown that legal professionals sometimes use their trust accounts for purposes unrelated to the provision of legal services, and effectively act as a bank or deposit-taking institution, i.e. holding money for the limited purpose of transferring the trust money from one party to another without the provision of legal services. The use of trust accounts by clients or other parties for transactions that are completely unrelated to any legal services risks facilitating money laundering through transactions deliberately designed to disguise that the source of funds is from criminal activity. For that reason, trust accounts must not be used except when directly related to the legal services being provided by you or your firm.

**In the real world:** A 2016 discipline decision from the Law Society of British Columbia illustrates the practice and the risks it presents. In [\*LSBC v. Donald Gurney\*](#), a lawyer used his trust account to transfer almost \$26 million in connection with four line of credit agreements in which his client was the sole borrower. There were no legal services provided – only the receipt and disbursement of funds. The disciplinary panel found that Gurney had breached his professional and ethic duties by failing to make reasonable inquiries about the transactions, and by using his trust account as a conduit for funds notwithstanding “the series of transactions being objectively suspicious.”

Proper usage of a trust account requires you to monitor its usage and exercise your judgment about appropriate activity. Even when the use of your trust account is related to the provision of legal services, you should ask yourself whether it is appropriate and necessary under the circumstances.

### Features of the Model Trust Accounting Rule

'Money' is a defined term and includes cash, cheques, credit card transactions, post office orders, express and bank money orders and electronic transfer of deposits at financial institutions.

Under the rule only money that may be deposited into a trust account is money that is directly related to legal services that you or your firm are providing. The term “legal services”, which is not defined in the rule, generally means the application of legal principles and legal judgement to the circumstances or objectives of a person or entity and can include:



- Giving advice with respect to a person's or entity's legal interests, rights or responsibilities of the person or of another person;
- Selecting, drafting, completing or revising documents that affect or relate to the legal interests, rights or responsibilities of a person or entity;
- Appearing as counsel or advocate for a person or entity in a proceeding before a court or an adjudicative body; and
- Negotiating or settling the legal interests, rights or responsibilities of a person or entity.

Money that is not related to the legal services provided by you or your legal practice may not be placed in a trust account.

### **In the real world:**

#### **Mr. T:**

Mr. T did not verify or meet his client in person. His client deposited funds into Mr. T's trust account and asked Mr. T to keep the funds in a separate interest bearing trust account as the client did not need the funds for the time being. Emails between the client and lawyer indicated that they were concerned over the funds being traced. Furthermore, it appears the client was under investigation from the U.S. federal government.

Mr. T issued bills for time spent to set up the term deposits, provide related banking services and to write brief character references for the client to various foreign financial and investment organizations located around the world. Mr. T confirmed with the law society's auditor that legal services were not provided in connection with the trust funds.

#### **Ms. G:**

Ms. G used her trust account to disburse business expenses for a client who owns a horse farm. While Ms. G issued bills for legal services surrounding the sale of assets, the bills also charged the client monthly administrative duties and the cost of preparing trust cheques and maintaining the trust account. When asked for an explanation, Ms. G explained that the client did not utilize their external accountant because the client wanted to "mitigate the risk of loss associated with the calculation and settling of operating liabilities."

As set out in the rule, you must pay out any money remaining in trust following the completion of a transaction or matter as soon as practical.

In the spirit of the rule, you should ideally review client trust ledger accounts at least monthly. Every effort should be made to pay funds due to the client and to third parties within one month of all trust conditions being satisfied, and similarly, to swiftly transfer funds to your chequing account upon billing for your legal fees, disbursements or expenses



## Appendix A: Examples of Acceptable Photo Identification Documents

Source: <http://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.asp>

Type of card or document	Issuing jurisdiction and country
<u>Canadian passport</u>	Canada
<u>Permanent resident card</u>	Canada
<u>Citizenship card</u> (issued prior to 2012)	Canada
<u>Secure Certificate of Indian Status</u>	Canada

### Driver's licences

<u>British Columbia Driver's Licence</u>	British Columbia, Canada
<u>Alberta Driver's Licence</u>	Alberta, Canada
<u>Saskatchewan Driver's Licence</u>	Saskatchewan, Canada
<u>Manitoba Driver's Licence</u>	Manitoba, Canada
<u>Ontario Driver's Licence</u>	Ontario, Canada
<u>Québec Driver's Licence</u>	Québec, Canada
<u>New Brunswick Driver's Licence</u>	New Brunswick, Canada
<u>Nova Scotia Driver's Licence</u>	Nova Scotia, Canada
<u>Prince Edward Island Driver's Licence</u>	Prince Edward Island, Canada
<u>Newfoundland and Labrador Driver's Licence</u>	Newfoundland and Labrador, Canada
<u>Yukon Driver's Licence</u>	Yukon, Canada
<u>Northwest Territories Driver's Licence</u>	Northwest Territories, Canada
<u>Nunavut Driver's Licence</u>	Nunavut, Canada
<u>The DND 404 Driver's Licence</u>	The Department of National Defence, Canada

### Provincial services cards

<u>British Columbia Services Card</u>	British Columbia, Canada
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### Provincial or territorial identity cards

<u>British Columbia Enhanced ID</u>	British Columbia, Canada
<u>Alberta Photo Identification Card</u>	Alberta, Canada
<u>Saskatchewan Non-driver photo ID</u>	Saskatchewan, Canada
<u>Manitoba Enhanced Identification Card</u>	Manitoba, Canada
<u>Ontario Photo Card</u>	Ontario, Canada
<u>New Brunswick Photo ID Card</u>	New Brunswick, Canada
<u>Nova Scotia Identification Card</u>	Nova Scotia, Canada
<u>Prince Edward Island Voluntary ID</u>	Prince Edward Island, Canada

<u>Newfoundland and Labrador Photo Identification Card</u>	Newfoundland and Labrador, Canada
<u>Yukon General Identification Card</u>	Yukon, Canada
<u>Northwest Territories General Identification Card</u>	Northwest Territories, Canada
<u>Nunavut General Identification Card</u>	Nunavut, Canada

**Type of card or international document**

United States passport	United States
France driver's licence	France
Australian driver's licence	New South Wales, Australia



## Appendix B: Examples of Reliable Sources of Information Under the Dual Process Method to Identify an Individual

Source: <http://www.fintrac-canafe.gc.ca/guidance-directives/client-clientele/Guide11/11-eng.asp>

### Documents or information to verify name and address

#### 1. Issued by a Canadian government body

- Any card or statement issued by a Canadian government body (federal, provincial, territorial or municipal)
  - Canada Pension Plan (CPP) statement
  - Property tax assessment issued by a municipality
  - Provincially-issued vehicle registration
- Benefits statement
  - Federal, provincial, territorial, and municipal levels
- CRA documents:
  - Notice of assessment
  - Requirement to pay notice
  - Installment reminder / receipt
  - GST refund letter
  - Benefits statement

#### 2. Issued by other Canadian sources

- Utility bill (for example, electricity, water, telecommunications)
- Canada 411
- T4 statement
- Record of Employment
- Investment account statements (for example, RRSP, GIC)
- Canadian credit file that has been in existence for at least 6 months
- Product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)

#### 3. Issued by a foreign government

- Travel visa

### Documents or information to verify name and date of birth

#### 1. Issued by a Canadian government body

- Any card or statement issued by a Canadian government body (federal, provincial, territorial or municipal)
  - Canada Pension Plan (CPP) statement of contributions



- Original birth certificate
- Marriage certificate or government-issued proof of marriage document (long-form which includes date of birth)
- Divorce documentation
- A permanent resident card
- Citizenship certificate
- Temporary driver's licence (non-photo)

## **2. Issued by other Canadian sources**

- Canadian credit file that has been in existence for at least 6 months
- Insurance documents (home, auto, life)
- Product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)

## **Documents or information to verify name and confirm a financial account**

Confirm that the individual has a deposit account, credit card or loan account by means of:

- Credit card statement
- Bank statement
- Loan account statement (for example. mortgage)
- Cheque that has been processed (cleared, non-sufficient funds) by a financial institution
- Telephone call, email or letter from the financial entity holding the deposit account, credit card or loan account.
- Identification product from a Canadian credit bureau (containing two trade lines in existence for at least 6 months)
- Use of micro-deposits to confirm account

## **How to rely on the credit file for the dual process method**

A Canadian credit file that has been in existence for at least 6 months can be referred to as one source to verify name and address, name and date of birth or name and confirmation of a financial account. A second source from the dual process method, for example a CRA notice of assessment, must be relied on to verify the second category of information. In this instance, the two sources are the credit bureau that provided the credit file and CRA as the source of the notice of assessment. The information from these two sources must match the information provided by the individual.

The reference number for a credit file must be unique to the individual and associated to the credit file; it cannot be a reference number created by the legal professional.





Information from a credit bureau can also be obtained if they are acting as an aggregator and compiling original sources, often referred to as tradelines, so long as the identifying information is obtained from those tradelines. In this instance, the credit bureau must provide **two** independent, original tradelines as sources that verify the individual's **name and address, name and date of birth or name and confirmation of financial account**. Each tradeline is a source, not the credit bureau.

If the full financial account number is not provided because it was truncated or redacted, it is not acceptable. The legal professional must also confirm that each tradeline originates from a different source.



## Appendix C: Additional Resources

### Canada

The Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) [website](#) contains links to numerous publications and guidance documents. For example, there is a useful guidance document on [Methods of identify individuals and confirm the existence of entities](#) and, for those lawyers practicing in the area of real estate transactions, an operational brief on [Indicators of Money Laundering in Financial Transactions Related to Real Estate](#).

Provincial law societies will have different levels of information available to their members. At the time of publishing this Guidance, the [Law Society of British Columbia](#) has published numerous FAQs, Discipline Advisories, and articles in its Bencher Bulletins on topics related to client ID and verification, the “no cash rule”, and other red flags that lawyers should watch out for. Similarly, the Law Society of Ontario has a [dedicated FAQ page for cash transactions](#) and the Law Society of Alberta has a [page dedicated to client ID and verification](#). Contact your law society for more information.

### United States

The American Bar Association, the International Bar Association, and the Council of Bars and Law Societies of Europe co-authored in 2010 a comprehensive guide for lawyers in detecting and preventing money laundering in their practices (“[Voluntary Good Practices Guidance for Lawyers to Detect and Combat Money Laundering and Terrorist Financing](#)”).

Various sections of the ABA have also produced materials that may be useful and relevant. The Criminal Justice Group has formed a [Task Force on Gatekeeper Regulation and the Profession](#). The [International Anti-Money Laundering Committee](#) facilitates discussion and examination of issues related to AML through the organization of educational programs and sessions for ABA members.

### International

The Financial Action Task Force (FATF) is an international body that sets standards and promotes effective implementation of legal, regulatory and operational measures for combating money laundering and terrorist financing. Their website contains links to various country reports and guidance documents, including their 2008 [Risk-Based Guidance for Legal Professionals](#).

The International Bar Association’s ([IBA Anti-Money Laundering Forum](#)) is a mechanism that brings together information on AML legislation and compliance requirements, organized by jurisdiction. The [IBA Anti-Money Laundering Forum Reading Room](#) contains links to a range of AML resources (presentations, articles, books, websites and



media); however, it should be noted that the links do not appear to have been updated since 2012.

The Council of Bars and Law Societies of Europe (CCBE) Anti-Money Laundering Committee follows the work of the FATF and developments in European jurisdictions on AML legislation. The [Committee's website](#) contains links to position papers, letters, guides and recommendations, and reports and studies.

