

Purpose and currency of list

This list sets out notable updates from the Law Society of British Columbia meant to assist lawyers in observing their professional obligations. It is designed to be used with the CLIENT IDENTIFICATION AND VERIFICATION PROCEDURE (A-1) checklist, the CLIENT FILE OPENING AND CLOSING (A-2) checklist, and the practice area-specific checklists. It is current to September 1, 2020.

Law Society Rules

- *Anti-money laundering measures—trust accounts.* Except as permitted by the *Legal Profession Act* or the Law Society Rules or otherwise required by law, a lawyer or law firm may not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm. A lawyer or law firm must take reasonable steps to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate (see Law Society Rule 1, definition of “trust funds” and Law Society Rule 3-58.1). For more information, see the [Discipline Advisory \(April 10, 2018\)](#) and the resources at the [Trust Assurance Program](#) page, both on the Law Society Website.
- *Anti-money laundering measures—client identification and verification and source of money.* Changes to the client identification and verification rules took effect on January 1, 2020 and in April 2020. The changes introduce more stringent requirements to verify a client’s identity, provide more options for how to confirm a client’s identity, and require lawyers providing legal services in respect of a financial transaction to obtain additional information about a client’s source of money, as well as periodic monitoring and recording of professional business relationships with clients. See the [Client ID & Verification](#) page on the Law Society website for resources including an Anti-Money Laundering Measures webinar (eligible for two hours of CPD ethics credits), practice advice articles in the *Benchers’ Bulletin* (particularly the Summer 2020, Spring 2020, Winter 2019, and Fall 2019 issues), FAQs on various topics (including source of money, use of agents, and monitoring), case studies, risk advisories, Discipline Advisories, and the client identification and verification procedure checklist.
- *Anti-money laundering measures—cash transactions.* Changes to the cash rule and records of cash transactions took effect in July 2019 (Rules 3-59 and 3-70). Lawyers are prohibited from accepting more than \$7,500 in cash, which increases the previous amount by one cent for consistency with the updated Federation of Law Societies Model Rule on Cash Transactions. (See exceptions for fees, etc. in connection with the provision of legal services in subrules (2) and (4) of Rule 3-59.) For more information, see the July 15, 2019 Notice to the Profession, the [Summer 2019 Benchers’ Bulletin](#), pp. 10 to 14, and the [Fall 2019 Benchers’ Bulletin](#), pp. 14 to 17.

Code of Professional Conduct for British Columbia

- *Mental health.* Potentially stigmatizing language has been removed from the duty to report a lawyer, and the related commentary has been amended to remove barriers for lawyers who may seek help for mental health challenges (*BC Code* rule 7.1-3 and commentary).

Of note

- *Anti-money laundering.* Money laundering affects every aspect of our society and its institutions, including financial institutions, law enforcement agencies and professional regulators. Money laundering is not a victimless crime; it enables criminal activity in all walks of life and affects all Canadians. Lawyers may be at risk of being targeted by money launderers due to their roles in forming corporations and trusts, in dealing with real estate transactions, and in operating trust accounts. These areas of legal services are used every day for legitimate transactions, which is why lawyers must be vigilant to ensure that they are not used by sophisticated criminals looking to filter funds through transactions that make it appear as though the funds came from legitimate activities. The Law Society Rules require lawyers to withdraw from providing services involving any dishonesty, crime, or fraud—including money laundering—committed by clients or anyone else. For more information about the Law Society’s role in combatting

money laundering, and complying with your professional obligations, please consult the resources available on the [Anti-Money Laundering](#) page on the Law Society website.

- *Fraud prevention.* Lawyers should maintain an awareness of the myriad scams that target lawyers, including the cheque printing scam, the bad cheque scam, fraudulent changes in payment instructions (i.e., through the client’s email or a similar-looking email address), and fake law firms and lawyers. Lawyers must be vigilant about the client identification and verification rules, the source of money when there is a financial transaction, and the no-cash rules. Lawyers should be on high alert for fraudulent activity, especially while they are away from the office and during holidays. Lawyers should implement appropriate supervision of their practice while away. See the [Fraud Prevention](#) page, including the “Fraud Alerts” section, on the Law Society website.
- *Searches of lawyers’ electronic devices at borders.* See “Crossing Borders with Electronic Devices—Canada, the US and Beyond” in the [Spring 2019 Benchers’ Bulletin](#) for recommendations to minimize the risks of compromising professional obligations and responsibilities when travelling with electronic devices across borders. Links to correspondence about this topic between the Law Society, the Federation of Law Societies, and the federal government are included.
- *Financial institution holds on trust funds.* Financial institutions can and have placed holds on trust cheques, certified cheques, and bank drafts. A hold could be for as little as one day or for four or more days. During the hold, the financial institution seeks to verify that the funds are available from the account at the financial institution on which the financial instrument is drawn. If the financial institution determines that the financial instrument is counterfeit or altered, the institution and the lawyer may be protected from the fraud. However, a hold on a legitimate instrument can cause potential issues with closings and lawyers’ undertakings. For risk mitigation tips, consult the [financial institution holds on trust funds practice resource](#) on the Law Society website.
- *Withdrawal under a contingency fee agreement—[Discipline Advisory \(August 13, 2020\)](#).* Special circumstances apply if you are withdrawing from a retainer that is pursuant to a contingency fee agreement (“CFA”). You cannot withdraw unless you are discharged, the client persists in instructing you to act contrary to professional ethics, or you are not competent to continue to handle the matter. See *BC Code* section 3.7 and rule 3.6-2, commentary [2]. The only exception to these restrictions on withdrawal is if the written CFA specifically states that you have a right to do so and sets out the circumstances under which withdrawal may occur.
- *Micro-cap stocks—[Discipline Advisory \(June 1, 2020\)](#).* The Law Society has warned lawyers that micro-cap stocks can pose a risk to the public as they are attractive to securities fraudsters.
- *Private lending—[Discipline Advisory \(April 2, 2019\)](#).* The Law Society has warned lawyers that there is an increased risk of illegal activity with private lending and that it is a means by which proceeds of crime can be laundered.

Questions

You are welcome to contact a Law Society practice advisor for ethics and practice management questions at practiceadvice@lsbc.org or 604.643.5797. For questions about trust accounting, including cash, contact Trust Assurance at trustaccounting@lsbc.org or 604.697.5810.