
Law Society Notable Updates List (A-3)

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 & CLOSING (A-2) checklist, as well as the practice area-specific checklists. It is current to September 1, 2022.

Law Society Rules

- *Canada Deposit Insurance Corporation (“CDIC”).* Amendments to Law Society Rule 3-77 (May 2022) reflect the new reporting requirements for professional trust accounts in the *CDIC Act* in which “professional trustees” must opt in or their trust accounts will be treated as general accounts. General accounts require disclosure of trust beneficiary information, which lawyers are not permitted to do absent instructions of each client. Under the amended Rule 3-77, lawyers are required to designate their trust accounts held in a designated savings institution insured by CDIC as professional trustee accounts, in order to reduce the risk of making improper disclosures of confidential and potentially privileged information, and to ensure that there is no loss or reduction of insurance coverage. For more information see the Law Society’s [CDIC FAQs webpage](#).
- *Administrative penalties.* Effective April 2022, administrative penalties may be imposed on lawyers who breach the cash transactions rule (Rule 3-59), the electronic submission of documents rule (Rule 3-96.1) or the Client Identification and Verification Rules (Rules 3-98 to 3-110). See the definition of “professional conduct record” in Rule 1 and Rules 3-8(3), 4-48(1.2), 4-56(1.1) and (2) and 4-58 to 4-60.
- *Alternative discipline process.* Effective April 2022, a new alternative discipline process is created for circumstances in which a health issue has contributed to lawyer misconduct, to enable lawyers to participate in a consent-based process and improve their ability to meet their professional responsibilities (Rules 3-4(3), 3-8(2) and (2.1), 3-9(3) and Rule 3.9.1 to 3-9.10).
- *Indigenous intercultural course.* The “Indigenous Intercultural Course” is mandatory as of January 1, 2022 (Rules 3-26, 3-28.1 and 3-28.2). Every practising lawyer must complete the course within the required time limits and certify its completion in the prescribed form to the Executive Director. A fee will be imposed for late completion of the course (Rule 3-28.11 and Schedule 1). Failure to complete the course and certify its completion can result in suspension.
- *Trust accounts—deposits and withdrawals.* Effective July 2021, retainers received by lawyers providing mediation, arbitration and parenting co-ordination services may be deposited to their lawyer trust accounts (Rules 3-58.1 and 3-60(4)). Trust funds may be withdrawn by bank draft, provided that certain prescribed conditions are met (Rules 3-64(4), 3-64.1(2) and 3-64.3). 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 Rule 1, definition of “trust funds” and Rule 3-58.1.)

Code of Professional Conduct for British Columbia

- *Anti-money laundering measures—Trust accounts, prohibited transactions.* BC Code rule 3.2-7, commentary [3.1] was amended in January 2021 to clarify lawyers' professional responsibilities and to address concerns that lawyers' trust accounts not be used for the purpose of money laundering or other prohibited transactions. A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud. Lawyers should make inquiries of a client who may be seeking, contrary to the prohibition in Rule 3-58.1(1), the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so. A lawyer should make a record of the results of these inquiries (commentary [3.2]).

Of Note

- *Cullen Commission of Inquiry into Money Laundering in British Columbia—Final report.* The Cullen Commission's final report was publicly released on June 15, 2022. The Commission heard from almost 200 witnesses over three years. In the 1,800-page report, Commissioner Cullen found that money laundering is a serious problem in BC and requires attention from government, law enforcement, and regulators. He discussed the main areas of risk to lawyers and made a number of key findings and recommendations directly relevant to the legal profession and the Law Society. He stated that the Law Society rules limiting the acceptance of cash, client identification and verification, and trust account regulation go a long way to mitigating the risk of money laundering. The full report, including recommendations 53 through 65, is available [here](#). The Law Society has established a Trust Review Task Force to consider the recommendations. See the [Terms of Reference](#) here.
- *Fixed fee arrangements—Discipline Advisory (June 2, 2022).* The British Columbia Court of Appeal affirmed a Law Society Tribunal decision that funds received by a lawyer pursuant to fixed or flat fee arrangement for services to be performed were trust funds and should not have been deposited to a general account. Where you received a fixed or flat fee and have not completed the services for the client, the funds must be deposited into a trust account as soon as practicable and are to be held in trust until the services have been provided, unless there is an express agreement with the client. Review this advisory for more information about handling funds accepted under a fixed or flat fee.
- *Enhancements to Lawyer Directory support inclusivity.* In April 2022, the Law Society made it possible for lawyers to add their pronouns and a title/honorific to their [Lawyer Directory](#) profile that is available on the website. The Lawyer Directory is an important tool for the public and other legal professionals to help people find the names, contact information and practising status of lawyers licensed in BC. The change to the Lawyer Directory will make it easier for public consumers of legal services and legal professionals who are searching for or looking up lawyers using the directory to know which pronouns and/or title/honorific to use when communicating or interacting with them.
- *Advice Decision-Making Assistant (ADMA).* In April 2022, the Law Society launched a new online tool that is available 24/7 to lawyers seeking assistance with ethics and practice management questions. ADMA assists users by guiding them through a broad range of professional responsibility queries, providing helpful links and resources to inform their decision making (including references to relevant rules), and offering an online booking system to schedule a call with a Practice Advisor for further assistance. ADMA was developed in-house at the Law Society and designed to be user-friendly, intuitive and available whenever needed. To access ADMA, click [here](#).

- *Canadian Sanctions Related to Russia and Belarus: Implications for the Profession—Federation of Law Societies of Canada, April 6, 2022.* The Government of Canada introduced new sanctions in response to Russia’s invasion of Ukraine. The Federation of Law Societies Policy Counsel Counterpart Group has developed [guidance](#) to assist lawyers to understand the implications of the sanctions and to exercise due diligence in determining whether the sanctions apply to a matter or client with whom they are dealing, and stay up to date on changes to the sanctions.
- *The Consolidated Canadian Autonomous Sanctions List—Government of Canada.* The Government of Canada publishes a Consolidated Canadian Autonomous Sanctions List, searchable by country (not limited to Russia and Belarus) and by name. The list includes individuals and entities subject to specific sanctions regulation made under the *Special Economic Measure Act* and the *Justice for Victims of Corruption Foreign Officials Act*. The list is updated from time to time but for accurate information up to date information, refer to the relevant regulations in which an individual or entity is listed.
- *Country/Geographic risk—[Discipline Advisory \(February 10, 2021\)](#).* Lawyers need to be on guard against unwittingly facilitating any dishonesty, crime or fraud including money laundering. It is imperative that lawyers know their clients and understand the facts relevant to the retainer, including the source of funds sent or received and, where necessary, the source of the client’s wealth. Where there are suspicious circumstances, lawyers must make reasonable inquiries to ensure, on an objective basis, that the transaction is legitimate prior to acting or continuing to act. One category of suspicious circumstances that lawyers need to be on the lookout for is geographic risk. Review this Discipline Advisory for guidance on managing geographic risk, which may arise in a number of ways on a matter.
- *Fraud prevention.* You should maintain an awareness of the scams that commonly target lawyers, including the cheque printing scam, the bad cheque scam, fraudulent changes in payment instructions (e.g., through the client’s email or a similar looking email address), value fraud, and fake law firms and lawyers. Be vigilant about client identification and verification, the source of money when there is a financial transaction, and the restrictions on cash. While criminals may target law firms at any time, keep in mind that cybercriminals like to target law firms during vacation periods. Implement appropriate supervision of your practice while away. For more information, see the *Bencher’s Bulletin* articles [Real estate transactions – know your client primer](#), Summer 2021 (p. 12), [Fraud 101 for lawyers](#), Fall 2021 (p. 10), [Forming companies and other structures – managing the risk](#), Spring 2021 (p. 8), and the [Client ID & Verification](#) and the [Fraud Prevention](#) webpages on Lawyers Indemnity Fund website.
- *Cyber-security insurance coverage.* The Lawyers’ Indemnity Fund has added cyber insurance for BC law firms to the existing professional liability program. The cyber coverage, provided by Coalition, Inc. combines state-of-the-art cybersecurity with best-in-class cyber insurance. Coalition’s cybersecurity platform includes 24/7 security monitoring, automated security alerts, employee training, and access to security experts to prevent cyber incidents before they occur. In addition, the coverage protects business value including financial, intangible, and tangible damage with comprehensive cyber insurance. Cyber incidents come in many forms—from ransomware, denial of service attacks, and data breaches, to social engineering, wire fraud, and technology failures. Coalition helps lawyers solve cyber risk before, during and after an incident occurs. See the [LIF Cyber Coverage](#) page on the Lawyers Indemnity Fund website for more information, including how Coalition’s proactive risk management software can monitor a law firm’s cyber risk to inform preventative measures, and alert the firm to any red flags to activate the security incident response team.

- *Searches of lawyers' electronic devices at borders.* See [Crossing Borders with Electronic Devices—Canada, the US and Beyond](#), Spring 2019 *Bencher's Bulletin* (pp. 12 to 14) 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.
- *Bank 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 from 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 [Bank Holds on Trust Funds Practice Resource](#) on the Law Society website.
- *Security of records: Rule 10-4 Reports—Discipline Advisory (August 31, 2021).* You are required to take reasonable security measures to protect your records against the risk of loss, destruction and unauthorized access, use or disclosure (see Rule 10-4(1)). If you have lost custody or control of any of your records for any reason, you must immediately notify the Law Society in writing of all relevant circumstances (see Rule 10-4(2)). Review this advisory for more information on some common breaches that precipitate Rule 10-4 reports and how to avoid those breaches.
- *Self-represented/unrepresented litigants—Discipline Advisory (June 29, 2021).* The Law Society receives hundreds of complaints every year from self-represented/unrepresented litigants against lawyers acting for clients on the opposite side of their case. Review this advisory for guidance and ten tips for lawyers when the opposing party is self-represented.
- *Withdrawal under a contingency fee agreement—Discipline Advisory (August 13, 2020).* Special circumstances apply if withdrawing from a retainer that is pursuant to a contingency fee agreement (“CFA”). A lawyer cannot withdraw unless they are discharged, the client persists in instructing them to act contrary to professional ethics, or they are not competent to continue to handle the matter. See *BC Code* s. 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 the lawyer has a right to do so and set out the circumstances under which withdrawal may occur. Review this Discipline Advisory for more information.
- *Micro-cap stocks—Discipline Advisory (June 1, 2020).* Micro-cap stocks can pose a risk to the public as they are attractive to securities fraudsters. Review this Discipline Advisory for more information.
- *Private lending—Discipline Advisory (April 2, 2019).* 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. Review this Discipline Advisory for more information.

Questions

- Feel welcome to contact a Law Society Practice Advisor for ethics and practice management questions. Practice Advisors can be contacted by email at practiceadvice@lsbc.org, by phone at 604.443.5797, or through booking an appointment in [Advice Decision-Making Assistant \(ADMA\)](#). For questions about trust accounting, including cash, contact Trust Assurance at trustaccounting@lsbc.org or 604.697.5810.