THE LAW SOCIETY OF BRITISH COLUMBIA'S SUBMISSIONS

FINANCIAL ACTION TASK FORCE, 5TH ROUND MUTUAL EVALUATION OF CANADA'S ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING MEASURES

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Table of Contents

I. Introduction 2

II. Effectiveness of AML/CTF Measures 4

A. Commission of Inquiry into Money Laundering 4

B. Admission and Gatekeeper Obligations 7

C. AML/CFT Rules and Ethical Obligations 9

D. AML/CTF Educational Efforts 16

E. Proactive Compliance Audits 18

F. Investigations and Sanctions 20

G. Collaboration and Information Sharing 24

III. Conclusion 25

Schedule 1 – LSBC AML/CTF Educational Resources 26

Schedule 2 – LSBC's AML/CTF Related Cases 29

I. Introduction

1. Canada's Constitution grants certain powers to the federal government and other powers to the 10 provinces and three territories. In respect to the licensing and regulation of the legal profession, under the Constitution, those powers rest with the provinces and territories[1]. There are 14 provincial/territorial law societies in Canada[2].

2. The Law Society of British Columbia (the "LSBC") is the licensing body and regulator of the legal profession in the province of British Columbia. The LSBC, established more than 140 years ago, is a self-regulatory body, that operates independent of government and receives no government funding. The LSBC is responsible for the regulation of over 15,000 legal professionals in British Columbia[3]. It is governed by a board of both elected lawyers and appointed representatives who are not lawyers. In fulfilling their duties, all members of the board (known as Benchers) must act in the public interest.

3. The LSBC's statutory powers to regulate the legal profession are set out in the *Legal Profession Act*[4]. Its paramount objective is to uphold and protect the public interest in the administration of justice[5]. To meet its statutory objectives, the LSBC sets standards for admission into the profession and for ethical and competent practice, educates and provides guidance on the required standards of conduct, proactively audits for compliance, investigates potential discipline violations and imposes sanctions where appropriate.

4. Unlike some other jurisdictions outside of Canada, the LSBC does not have a dual role in that it is not an association representing the interests of lawyers. It is solely a regulator acting in the public interest. In Canada, a representative role for lawyers is fulfilled by groups like the Canadian Bar Association, an entity separate from any Canadian law society.

5. Within the meaning set out in the FATF methodology, the LSBC is the "competent authority" with anti-money laundering and counter terrorist financing ("AML/CTF")

[1] Section 92(13 of the Constitution Act, 1867, 30 & 31 Vict, c 3

[2] There are two law societies in the province of Quebec.

[3] 2023 LSBC Annual Report, p. 24

[4] S.B.C. 1998, c. 9

[5] Section 3 of the *Legal Profession Act*

supervisory and monitoring responsibilities in respect to legal professionals in British Columbia.

6. The LSBC recognizes that legal professionals may be used, knowingly or unknowingly, to facilitate money laundering and terrorist financing and the LSBC has been actively taking measures to address these risks in keeping with its statutory duties. An integral part of the LSBC's public interest mandate, and its strategic objectives, is ensuring it engages in effective, risk-based AML/CTF regulation of lawyers[6].

7. The LSBC is committed to its leadership role in this work, alongside the Federation of Law Societies of Canada (the "Federation"). The Federation is not a regulator but is the umbrella association representing the interests all 14 Canadian law societies. The Federation coordinates and assists with the AML/CTF efforts of the law societies including through the work of the Federation's AML Standing Committee, of which two senior LSBC staff are members[7].

8. The importance of the LSBC's AML/CTF regulatory work is enhanced by the fact that lawyers in Canada are not subject to the federal government's AML/CTF regime[8], including customer due diligence requirements for DNFBPs[9] in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*[10] (the "PCMLTFA"). Consistent with the constitutional principles in Canada, the LSBC, as the competent authority, is responsible for imposing mandatory customer due diligence and other AML/CTF requirements on lawyers in British Columbia and proactively monitoring and enforcing compliance with those requirements.

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[6] The 2023 LSBC Annual Report at pages 14-15, discusses the LSBC's key priorities, including preventing money laundering.

[7] The work of the AML Standing Committee includes preparing guidance/educational tools as well as drafting the Model Rules. The Federation Model Rules consist of: Model Rule on Cash Transactions; Model Rule on Client Identification and Verification; and Model Trust Accounting Rule.

[8] The Supreme Court of Canada in *Canada (Attorney General)* v. *Federation of Law Societies of Canada*, 2015 SCC 7, [2015] 1 SCR 401, determined that certain provisions of the PCMLTFA intended to apply to lawyers were unconstitutional, as they violated the Charter of Rights and Freedoms (a part of Canada's Constitution) by interfering with the independence of the legal profession and a lawyer's duty of commitment to a client's cause as well as solicitor-client privilege.

[9] Designated Non-Financial Businesses and Professionals

[10] S.C. 2000, c. 17

9. Within the constitutional framework of Canada, there is effective AML/CTF regulation of the legal profession in British Columbia by the LSBC, including through the following measures:

    a. Strong gatekeeper function to assess whether a person is entitled to practice law in the province, preventing persons who are not fit or of good character from practising law in British Columbia;

    b. Setting stringent AML/CTF related obligations on the legal profession that must be complied with;

    c. Educating and providing guidance to lawyers on the AML/CTF obligations;

    d. Proactively auditing law firms in respect to their compliance with the AML/CTF obligations, with higher risk firms being audited more frequently;

    e. Conducting robust investigations into potential breaches of the AML/CTF obligations and imposing effective, proportionate sanctions; and

    f. Strong collaborative relationships with law enforcement, government and other regulators to support the LSBC's AML/CTF objectives, including understanding new and emerging risks.

10. Each of these measures is discussed further below, with case studies to illustrate the LSBC's effectiveness as a self-regulatory body with AML/CTF supervisory and monitoring responsibilities over legal professionals in British Columbia.

II. Effectiveness of AML/CTF Measures

A. Commission of Inquiry into Money Laundering

11. The effectiveness of the LSBC's AML/CTF measures were extensively examined in an independent commission of inquiry initiated by British Columbia's provincial government in 2019, known as the Commission of Inquiry into Money Laundering in British Columbia[11]. The Commission was led by a retired justice of the British Columbia Supreme

[11] See the Commission's website. As it relates to the LSBC, the Commission's terms of reference included making findings of facts about "the acts or omissions of responsible regulatory agencies and individuals, and whether those have contributed to money laundering in the province or amount to corruption" and "the scope and effectiveness of the anti-money laundering powers, duties and functions of these regulatory agencies and individuals".

Court, the Honourable Justice Austin Cullen[12]. The LSBC was granted participant status and, in addition to providing the Commission with disclosure of thousands of LSBC records related to its AML/CTF efforts and making written submissions, a panel of senior LSBC representatives also testified before the Commission. The Commission's work was conducted over a three-year period and informed by the evidence of more than two hundred witnesses, including internationally recognized experts[13]. The Commission's final report, issued in June 2022, recognizes the money laundering risks in the legal profession and makes the following findings and comments about the LSBC's AML/CTF efforts[14]:

a. Lawyers in British Columbia "face extensive regulation for money laundering by the [LSBC]" and "that regulation has gone a long way to addressing many of the money laundering risks in this sector":

> While the foregoing risks are significant, the **Law Society has mitigated many of them through robust regulation**. Even though lawyers do not fall under the federal PCMLTFA regime, **they do face extensive regulation for money laundering by the Law Society. This regulation goes a long way to addressing the exclusion of lawyers from the PCMLTFA regime**[...]. **The Law Society regulates all aspects of lawyers' practice, and it has strong powers to investigate misconduct.** It can overcome legal privilege, compel answers and documents, and use search and seizure–type powers. When misconduct is found, the Law Society can impose sanctions ranging from reprimands or fines to suspension and disbarment[15].
> …
>
> …**it is inaccurate to say that lawyers in British Columbia are not regulated for anti–money laundering purposes**. Lawyers are subject to extensive anti–money laundering regulation by the Law Society, and that **regulation has gone a long way to addressing many of the money laundering risks in this sector**[16]. *[Emphasis added]*

b. The LSBC has "significant powers" and is "uniquely placed" to investigate lawyer misconduct, including because the LSBC is entitled to examine all client materials in a lawyer's possession regardless of whether the information is privileged.

> The Law Society has significant powers to regulate its members. In my view, **some of the critiques that have been levelled at the Canadian anti–money laundering regime with respect to lawyers**

[12] Commissioner Cullen was appointed as a British Columbia Supreme Court Justice in 2001 and was appointed Associate Chief Justice of the British Columbia Supreme Court in 2011.

[13] The Commission held 133 days of evidentiary hearings; heard testimony from 199 witnesses with an additional 23 witnesses providing evidence via sworn affidavit; and received 1,063 exhibits (Media - Cullen Commission),

[14] *Commission of Inquiry into Money Laundering in British Columbia, Final Report*, (the "Cullen Report") June 2022.

[15] Cullen Report, p. 22

[16] Cullen Report, p. 23

(discussed in Chapter 28) **have failed to fully appreciate the extent of these powers and the degree to which the Law Society engages in anti– money laundering regulation and oversight**[17]. …

The Law Society is empowered to review all material possessed by lawyers, including privileged information. **It is therefore uniquely placed to examine all aspects of a lawyer's practice, and it has powerful sanctions at its disposal. In some ways, Law Society regulation is able to target lawyer misconduct more effectively than the criminal justice system**…[18] *[Emphasis Added]*

c. The LSBC and the Federation have a strong understanding of money laundering risks in the legal profession.

> The evidence before me demonstrates that the **Law Society and the Federation have worked to gain a strong understanding of the money laundering risks in this sector** and have implemented measures focused on anti–money laundering since at least 2004. They also continue to revisit their anti–money laundering rules to address new and evolving risks. While there is always room for improvement in every sector – including the legal profession **–** it is not accurate to say the Federation and the Law Society do not understand the risks faced by their members[19]. *[Emphasis Added]*

d. The LSBC has a "robust" compliance audit program that has "significant potential to deter the improper use of a trust account in connection with money laundering" and to identify breaches.

> …the Law Society has developed, implemented, and maintained a robust compliance audit program. I applaud its commitment to ensuring that the auditors administering the program have specific anti–money laundering training and that the number and frequency of audits has increased. Although the audits allow the Law Society to identify non-compliance, even the prospect of an audit is itself a deterrent. The Law Society's Trust Assurance Program, while not foolproof, has significant potential to deter the use of trust accounts in connection with money laundering and to identify such a transgression should it occur. I encourage the Law Society to continue its diligent oversight in this regard[20].

e. The LSBC has taken its role "as the public interest regulator seriously" and "continues to revisit its Rules to address emerging issues and risks."

> It is clear to me that the Law Society, with the support of the Federation, has taken its role as the public interest regulator seriously. I find that it is engaged with anti–money laundering issues and continues to revisit its Rules to address emerging issues and risks. I trust that the Law Society will seriously consider my recommendations for ways in which the regime can be strengthened[21].

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[17] Cullen Report, p. 1113

[18] Cullen Report, pages 1133-1134

[19] Cullen Report, p. 1159

[20] Cullen Report, p. 1200

[21] Cullen Report, p. 1214

12. The Cullen Report made recommendations to the LSBC to enhance its AML/CTF efforts and recognized the importance of continuing to build on the collaborative relationships the LSBC has established with law enforcement, regulators and other stakeholders, including information sharing arrangements. The LSBC has carefully considered the recommendations made in the Cullen Report and is committed to strengthening its AML/CTF regulation. In May 2025, the LSBC's board (the benchers) approved recommendations made by a LSBC task force to implement many of the Cullen Report recommendations[22]. These recommendations adopted by the benchers include:

    a. Cullen Recommendation 55 to make it explicit that any cash received under the professional fee exception to the cash transaction rule[23] must be commensurate with the amount required or reasonably anticipated fees[24];

    b. Cullen Recommendation 56 to amend the client identification and verification rules to set out what is required when inquiring into a client's source of money[25]; and

    c. Cullen Recommendation 62 to implement mandatory AML training for lawyers who are most at risk of facing money laundering threats[26].

B. Admission and Gatekeeper Obligations (FATF Recommendation 28)[27]

13. Consistent with the importance of the independence of the legal profession, the LSBC has statutory authority to determine whether an applicant should be admitted to the bar in British Columbia[28]. With limited exceptions, for a person to engage in the practice of law

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[22] Bencher Agenda, Trust Review Task Force, pages 28-78, Feb. 7, 2025

[23] Rule 3-59 of the Law Society Rules 2015

[24] Recommendation 1 of the Trust Review Task Force.

[25] Recommendation 2 of the Trust Review Task Force.

[26] Recommendation 5 of the Trust Review Task Force.

[27] FATF Recommendation 28 includes a requirement that the self-regulatory body take the necessary measures to prevent criminals and their associates from being admitted to the legal profession, or them holding direct or beneficial ownership of a significant or controlling interest of a law firm or holding a management function.

[28] *Legal Profession Act,* sections 11 and 14 (rule making authority), section 15 (authority to practise law), and section 19 (applications for enrolment, call and admission, or reinstatement).

in British Columbia, they must be admitted to the bar by the LSBC and hold the status of a "practising lawyer"[29].

14. An applicant for enrollment in the bar admission program must meet the LSBC's academic qualifications and complete the 12-month Law Society Admission Program administered by the LSBC[30].

15. In addition to these educational and training requirements, each applicant seeking to be called in British Columbia must establish that they are of "good character and repute" and "fit to become a barrister and solicitor of the Supreme Court"[31]. In assessing the fitness and good character of applicants, the LSBC will investigate any concerns about the applicant, including prior criminal or quasi-criminal charges and financial difficulties. If there are concerns about the applicant, their application is considered by the LSBC's Credentials Committee, which is composed of LSBC benchers (lawyers and members of the public) and non-bencher lawyers. Ultimately if the application is not approved, a credentials hearing may be held before the LSBC Tribunal, an independent decision-making body. At the hearing, the onus rests with the applicant to prove they have met the fitness and good character test.

16. The LSBC also regulates law firms and has specific requirements to ensure that the ownership and control of law corporations rests solely with practising lawyers called in British Columbia, with limited exceptions[32]. These requirements mitigate against the risk of British Columbia law firms, and their trust accounts, being infiltrated or controlled by criminals.

[29] *Legal Profession Act,* section 15. The "practice of law" and a "practising lawyer" are both defined in s. 1(1) of the Act.

[30] The Law Society Admission Program consists of nine months of articling with an approved principal at a law firm and the Professional Legal Training Course (a 10-week bar admission course, which includes four skill assessments and two qualification examinations).

[31] *Legal Profession Act,* s. 19(1), states that: "No person may be enrolled as an articled student, called and admitted or reinstated as a member unless the benchers are satisfied that the person is of good character and repute and is fit to become a barrister and a solicitor of the Supreme Court."

[32] *Legal Profession Act,* s. 81(1) and Law Society Rules 2015, Part 9

C. AML/CFT Rules and Ethical Obligations (FATF Recommendations 1, 10, 11, 12, 15, 17, 18, 19, 22, and 23)

17. Lawyers in British Columbia are subject to AML/CTF requirements imposed by the LSBC. These requirements are set out in two instruments adopted by the LSBC benchers: the Law Society Rules and the *Code of Professional Conduct for British Columbia* (the "BC Code"); both instruments are binding on legal professionals[33].

18. The AML/CTF obligations imposed in the Law Society Rules are based on the Federation's Model Rules[34] and include the following:

    a. Strict limitations on the proper use of a lawyer's trust account to prevent a trust account from being used to move funds in the absence of legitimate legal services[35];

    b. With limited exceptions, a prohibition on accepting cash of more than $7,500 on a client matter[36]; and

    c. Client identification and verification rules including: (i) identifying clients and, when there is a "financial transaction", verifying the identity of the clients[37]; (ii) making source of funds inquiries[38]; (iii) monitoring the professional relationship; (iv) record-

[33] Section 11 of the *Legal Profession Act* sets out the authority of the LSBC benchers to make rules governing legal professionals and law firm. Section 11(3) states that the rules are binding on the legal professionals and firms.

[34] The Federation Model Rules consist of Model Rule on Cash Transactions, Model Rule on Client Identification and Verification, and Model Trust Accounting Rule.

[35] Rule 3-58.1 of the Law Society Rules requires that funds deposited to and withdrawn from a lawyer's trust account must be directly related to legal services being provided.

[36] Rule 3-59 of the Law Society Rules.

[37] A "financial transaction" is defined broadly in Rule 3-98 of the Law Society Rules to mean "the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect to the receipt, payment or transfer of money". Further, "money" is defined in Rule 3-98 to include "cash, currency, securities, negotiable instruments or other financial instruments, in any form, that indicate a person's title or right to or interest in them, and electronic transfer of deposits at financial institutions".

[38] The required source of funds inquiries include: (i) the payer's full name, occupation and contact information; (ii) the relationship of the payer to the client; (iii) the date on which the money was received by the lawyer from the payer; (iv) the economic activity or action that generated the money (e.g., bank loan, savings from salary, settlement funds); (v) the form in which the money was received by the lawyer (e.g., cheque, bank draft); (vi) the full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer; and (viii) any other information relevant to determining the source of money.

keeping requirements; and (v) mandatory withdrawal from the client matter if a lawyer knows or ought to know they would be assisting a client in fraud or other illegal conduct[39].

19. Lawyers must comply with the Law Society Rules. Any breach of the Law Society Rules, including of the above noted AML/CTF Rules, is a "discipline violation", supporting the imposition of disciplinary action against the legal professional or the law firm[40].

20. The importance of the client identification and verification rules, as an integral part of a lawyer's gatekeeper obligations, was noted by a hearing panel of the LSBC Tribunal in *Law Society of BC v. Huculak*, 2022 LSBC 26, at para. 111:

> The rules regarding client identification and verification exist to ensure that lawyers do not become inadvertent participants in money laundering, fraud and other criminal activities. They are an important extension of the lawyer's gatekeeper function as they prescribe the necessary steps for determining the legitimacy of a client's identity…

21. Complementing the mandatory obligations in the Law Society Rules is the BC Code, which is based largely on the Federation's *Model Code of Professional Conduct*. The BC Code sets out standards of conduct legal professionals must comply with. A breach of the BC Code in a lawyer's practice will be a discipline violation and support disciplinary action if the conduct amounts to "professional misconduct"[41]. This results in a proportionate approach to disciplinary action.

22. The parts of the BC Code addressing AML/CTF obligations include the following:

    a. Lawyers in British Columbia are by statute, officers of the court, with ethical duties arising from this, including that they may not aid, counsel or assist any person to act contrary to the law[42];

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[39] Customer due diligence requirements are set out in Part 3, Division 11 of the Law Society Rules.

[40] A finding by a hearing panel that a Law Society Rule has been breached is an adverse determination [s. 38(4) of the *Legal Profession* Act]. A hearing panel must impose a disciplinary sanction for a breach of the Rules [s. 38(5) to (7) of the *Legal Profession Act*].

[41] Professional misconduct is conduct that represents a "marked departure from the standard expected" of a competent lawyer [*Law Society of BC* v. *Martin,* 2005 LSBC 16 at para. 140] and is conduct grounded in a fundamental degree of fault, which may include a gross, culpable neglect of a lawyer's duties [*Law Society of BC* v. *Yen,* 2024 BCCA 416 at paras. 53 to 54]. A finding by a panel of professional misconduct is an adverse determination [s. 38(4) of the *Legal Profession Act*]. A hearing panel must impose a disciplinary sanction for professional misconduct [s. 38(5) to (7) of the *Legal Profession Act*].

[42] *Legal Profession Act,* s. 14(2). BC Code, rules 2.1-1(a) and 2.2-1.

b. Lawyers must not engage in any activity that they know, or ought to know, assists in or encourages any dishonesty, crime or fraud, including money laundering and terrorist financing. Further, they have a duty to make reasonable inquiries in the face of suspicious circumstances to objectively satisfy themselves of the legitimacy of the matter[43]; and

c. Lawyers must withdraw if a client persists in instructing the lawyer to act contrary to professional ethics[44].

23. The LSBC expects legal professionals to be fully aware of these AML/CTF provisions of the BC Code, including the duty to make inquiries in the face of suspicious circumstances – a long-standing obligation. As stated in *Huculak, supra*[45]:

> As established in *Elias v. Law Society of British Columbia*, 1996 BCCA 1359 and confirmed in *Law Society of BC v. Gurney*, 2017 LSBC 15, a lawyer's duty to investigate the circumstances of their retainer arises when there is objective reason to suspect that the purposes of the retainer are not completely legitimate. The duty to make reasonable inquiries into objectively suspicious circumstances has been mandated by the Rules — and therefore known to BC lawyers — for more than a quarter century…

[43] BC Code, rules 3.2-7 and 3.2-8 and its commentaries.

[44] BC Code, rule 3.7-7(b)

[45] At paras. 107

Case Study #1

Duty to make inquiries applies broadly / Willful blindness sufficient for finding of professional misconduct

In *Law Society of BC* v. *Barker,* 2025 LSBC 04, the respondent was retained in litigation proceedings related to completed real estate transactions. The respondent submitted that where there is a completed transaction, and the lawyer is defending that transaction in litigation, then there is no duty to consider any illegality in the underlying transaction even in the presence of obvious red flags.

The LSBC Tribunal's hearing panel rejected the respondent's agreement, stating in part:

> [372] In our view, the Respondent's position is not sound. Assuming an unscrupulous person successfully duped a solicitor, this position would mean that a litigation defence lawyer would not need to be on guard defending against any fraudulent transactions. All lawyers, whether solicitors or litigators are required to be on guard against being dupes of unscrupulous clients. An unscrupulous person may hire a defence lawyer to lend an air of respectability to an otherwise fraudulent lending scheme. In our view, the protection of the public is jeopardized… [emphasis added]
>
> …
>
> [373] In our view, there were several "red flags" that ought to have been noticed and addressed by the Respondent had he been on guard against being a dupe. Given the Respondent's key position that AB's role and involvement in the transactions were irrelevant to the defense of his clients' litigation, the Respondent became willfully blind to the multitude of red flags…

The hearing panel concluded that the respondent's conduct in failing to make reasonable inquiries in the face of suspicious circumstances as required under rule 3.2-7 of the BC Code and its Commentary, where he was wilfully blind to the suspicious circumstances, amounted to professional misconduct. The Law Society discovered the respondent's misconduct through a compliance audit.

24. The Law Society Rules together with the BC Code set out clear standards of conduct required of legal professionals to mitigate against the risk of being involved in transactions that could further money laundering or terrorist financing. Lawyers must know their clients, including making inquiries about the source of money used in the transaction, and they have a positive duty to make reasonable inquiries in the face of suspicious circumstances. They are obligated to withdraw and are not permitted to act or continue to act in a matter where they know or ought to know that they would be facilitating illegal conduct.

Case Study #2

Duty to make reasonable inquiries in suspicious circumstances

In *Law Society of BC* v. *Yen,* 2023 LSBC 02, the respondent permitted her client PL to use the firm's trust accounts to move over $9 million in the course of 21 months, in the absence of substantial legal services, and without making reasonable inquiries about the circumstances, including the source of funds. The respondent submitted her conduct did not amount to professional misconduct, including on the basis that she had not acted with deliberate dishonesty, but made innocent errors or failures. The respondent also attempted to rely on an indirect linkage between some legal services provided to PL and the funds in question.

At the time of the respondent's conduct, Rule 3-58.1 (trust account only for legal services) was not yet in force. Nonetheless, the respondent's submissions were not accepted. The LSBC Tribunal (Review Board) determined that the respondent's conduct, in failing to comply with the duty to make reasonable inquiries in the face of suspicious circumstances (as required by the commentary to rule 3.2-7 of the BC Code), met the test for professional misconduct. A finding of dishonesty or even wilful blindness was not necessary for the respondent's conduct to amount to professional misconduct. The respondent's failure to make inquiries, including into the source of funds being deposited into the trust accounts, constituted a gross culpable neglect of her duties, which was sufficient to support a finding of professional misconduct. The respondent received a three month suspension.

The respondent's misconduct was discovered through a compliance audit.

Case Study #3

Duty to make reasonable inquiries in suspicious circumstances

In *Law Society of BC* v. *Guo,* 2023 LSBC 28, the hearing panel of the LSBC Tribunal found that the respondent committed professional misconduct by permitting her trust account to be used without providing substantial legal services and by failing to make reasonable inquiries about the subject matter and objectives of the matter.

The respondent argued that her conduct was not professional misconduct, including on the basis that the LSBC had not proven her use of the trust account was in furtherance of money laundering. In rejecting the respondent's submissions, the panel stated in part:

> [175] The Respondent suggests this is not professional misconduct because the Law Society has not proven any of the deposits were for the purpose of money laundering. That misunderstands her role. Because of the circumstances the Respondent was obliged to make inquiries but did not…
>
> [176] Because the Respondent did not make enquiries and failed to identify any of these individuals, it is not known what precisely was the nature or purpose of the deposits. That is the harm, those making deposits were able to use the Respondent's trust account and she does not know whether or not the purpose was legitimate.
>
> [177] The Respondent also asserts that her conduct was not grave, was without malice and caused no harm. We find that failing to make appropriate enquiries in this situation is grave. While there may be a lack of malice, the fact that she knowingly allowed others to use her trust account where she would be only a money holder shows a concerning lack of appreciation of her ethical obligations.
>
> [178] The Respondent also argues that no harm was caused. In fact, no one involved with this Hearing knows whether or not actual harm occurred. We ought to know positively, when a lawyer's trust account is being used, that harm is not being caused and wrongdoing is not occurring. A lawyer's trust account must only be used for legitimate purposes. We do not know that in this case because of her failures.

The respondent was disbarred (*Law Society of BC* v. *Guo,* 2024 LSBC 11).

25. The LSBC recognizes that money laundering and terrorist financing risks may vary from one law practice to another and that a single checklist approach to AML/CTF obligations is not sufficient. Legal professionals are expected to understand the risks associated with the legal services they provide and to take reasonable steps to mitigate those risks. The LSBC publishes guidance to the profession to assist them in identifying risks and conducting risk assessments, as well identifying PEPs, sanctions evasion risks, and dealing with high-risk countries, such as:

    a. Risk Assessment and Compliance Guidance[46]

    b. Guidance to the Legal Profession[47]

    c. Guidance on Politically Exposed Persons / Heads of International Organizations[48]

    d. Canadian Sanctions Related to Russia and Belarus[49]

    e. Discipline Advisory - Country/Geographic Risk[50]

26. While the publications and guidance documents do not form part of the Law Society Rules or the BC Code, they may be relied on by the LSBC in assessing whether the lawyer's conduct amounts to professional misconduct[51].

27. The use of guidance and other educational resources allows the LSBC to respond quickly to proactively alert the profession to new and emerging AML/CTF risks and typologies.

[46] Federation, Dec. 2023

[47] Federation, updated March 2023

[48] Federation, Dec. 2023. The LSBC supports the creation of a federal data of PEPs/HIOs to assist legal professionals and others in fulfilling their AML/CTF obligations. In the absence of a reliable federal database, there are challenges for legal professionals being able to identify PEPs/HIOs.

[49] Federation, April 2022

[50] LSBC, Feb. 2021

[51] *Law Society of BC* v. *Huculak,* 2022 LSBC 26 at paras. 60-62; *Law Society of BC* v. *Gurney,* 2017 LSBC 15 at paras. 15; and *Law Society of BC* v. *Yen,* 2020 LSBC 45 at para. 37.

D. AML/CTF Educational Efforts (FATF Recommendation 34)

28. Consistent with its proactive, risk-based approach to regulation, the LSBC engages in significant AML/CTF educational initiatives, including nationally as part of the Federation's AML Standing Committee. In addition, the LSBC presents to legal professionals and law firm staff on risks and AML/CTF obligations[52]. **Schedule 1** is a non-exhaustive table of LSBC's AML/CTF educational resources and publications for the legal profession.

29. The Federation's AML Standing Committee has also produced various other resources that are linked on the LSBC's website[53]. These include Risk Advisories for real estate, shell corporations, private lending, trusts and litigation, Risk Assessment Case Studies, and the Red Flags Quick Reference Guide.

30. In addition, the LSBC and the Federation have put in place online learning programs on AML/CTF obligations offered at no cost[54]. The LSBC's AML Measures Webinar (first launched in 2020, updated in 2024) has over 67,000 views.

31. The LSBC also offers practice advice to the legal profession. The LSBC Practice Advisors provide one-on-one advice in respect to ethical issues, including AML/CTF obligations. This real time advice is available to lawyers as they are in the midst of handling client matters including determining whether they are obligated to withdraw or to decline a new retainer. In 2024, the LSBC Practice Advisors responded to 746 inquiries from lawyers in respect to their AML/CTF obligations.

[52] For example, in April 2025, a senior LSBC Practice Advisor presented to the British Columbia Legal Management Association on the AML landscape, best practices and professional obligations.

[53] See for example the LSBC's Client ID & Verification webpage containing a link to various Federation AML/CTF publications.

[54] The Federation's online learning program is at flsc.ca/anti-money laundering/.

Case Study #4

Proactive Practice Advice

A lawyer makes an inquiry to a practice advisor about a potential new client from a foreign jurisdiction. The lawyer has questions about the obligations to verify a client's identity. The client has asked the lawyer to send a demand letter to an opposing party to collect funds owed pursuant to a court order and to deposit the funds in the lawyer's trust account. The client takes the position that once a lawyer is involved, the opposing party will pay. The client instructs the lawyer to take the lawyer's fees from the amount deposited and send the client the balance. The client provides a copy of a court order and some supporting documents. In discussion, the practice advisor learns that the client has been trying to avoid proper verification of his identity, the opposing party does not have legal counsel and the court order is fake. The lawyer does not accept funds from the alleged opposing party and does not act for the client.

32. The LSBC Trust Assurance department also provides educational support and resources for lawyers and law firm staff, including online courses, and a Trust Accounting Handbook. Trust Assurance staff also answer queries from the legal profession that may involve AML/CFT obligations, such as the proper use of a trust account[55].

33. Further guidance to the legal profession is provided by the LSBC's comprehensive publication of public disciplinary outcomes including admitted discipline violations[56], decisions of the LSBC Tribunal[57], Administrative Penalties[58], and conduct review summaries[59]. Publication of disciplinary outcomes serves as a reminder to the profession of their ethical duties, provides guidance on understanding the duties, and serves as a caution to the profession of the consequences of breaching those duties.

[55] LSBC website-Trust Assurance

[56] Admitted Discipline Violations. The LSBC also may issue a news release, summarizing the matter such as Langley lawyer Gregory G. Dureault suspended for three months for professional misconduct.

[57] LSBC Tribunal website

[58] Administrative Penalties

[59] Conduct Reviews. A conduct review is a disciplinary action ordered by the LSBC Disciplinary Committee, that is focussed on remediation.

E. Proactive Compliance Audits (FATF Recommendations 1 and 28)

34. The LSBC has a proactive compliance audit program that detects for potential AML/CTF breaches. Generally, every law firm in British Columbia will have a compliance audit on a four or six year cycle, with firms being audited on a shorter cycle based on the LSBC's risk assessment of the law practice. There are approximately 3,000 law firms in British Columbia. In 2024, there were 560 compliance audits conducted of law firms, with the size of the law firms ranging from sole practitioners to firms with more than 100 lawyers.

35. The compliance audits are conducted by accountants, who are certified anti-money laundering specialists[60]. The auditors review the firm's records, generally for an 18-month period, to assess compliance with the trust accounting rules, professional financial obligations, and AML/CTF obligations. The auditors use data analytics to assist in identifying transactions in the trust accounts that may require further scrutiny.

36. When potential breaches of AML/CTF obligations are detected during an audit, the matter may be referred to the LSBC's Investigations, Monitoring & Enforcement department[61]. In 2024, the Investigations department received 47 referrals arising from compliance audits related to AML/CTF obligations. The LSBC's compliance audit program has proven to be highly effective in detecting concerns regarding AML/CTF obligations as demonstrated by numerous disciplinary cases that initiated as audit referrals to the Investigations department.

[60] CAMS designation through the Association of Certified Anti-Money Laundering Specialists ("ACAMS"). All auditors are also Chartered Professional Accountants.

[61] All potentially serious breaches are referred to Investigations.

Case Study #5

Serious AML/CTF breaches detected during a Compliance Audit

A routine, compliance audit conducted of William L. MacDonald's (the "Respondent") law practice, in 2019, identified several conduct concerns, including certain transactions conducted using the firm's trust accounts. These concerns were referred to the Investigations department. At the conclusion of the investigation, the LSBC issued a citation against the Respondent, which ultimately resulted in a formal Admission of Misconduct and Undertaking given to the LSBC.

The Respondent admitted that he engaged in professional misconduct including:

- Making representations to other counsel, in writing, that he knew or ought to have known were false or inaccurate.

- Taking instructions from his clients and allowing funds to flow through the firm's trust account in objectively suspicious circumstances, without making reasonable inquiries. Further, the Respondent continued to allow the use of the firm's trust account when he ought to have known it was being used to facilitate unlawful or dishonest conduct. As such, the Respondence assisted his clients in a fraudulent scheme to manipulate the securities market.

- On other client matters, permitting the use of his firm's trust accounts to receive and disburse funds in circumstances where he was not providing substantial legal services and where he failed to make reasonable inquiries about the purported transactions.

- Breaches of the client identification and verification rules.

The Respondent agreed to terminate his membership and not engage in the practice of law or apply for reinstatement for a period of 15 years.

The case study illustrates the effectiveness of LSBC compliance audits in uncovering serious conduct, including AML/CTF breaches, that would otherwise not likely come to the LSBC's attention.

F. Investigations and Sanctions (FATF Recommendations 1, 28 and 35)

37. The LSBC conducts risk-based, proportionate investigations and has significant investigative powers to fulfill its public interest mandate in respect to AML/CTF related conduct concerns[62]. These investigative powers include:

    a. Authority to issue an order requiring any person to attend to answer questions on oath or affirmation and/or to produce records in their possession or control. Failure to comply with the LSBC's order may result in the person being found in contempt by the Supreme Court of British Columbia[63].

    b. Effective information sharing arrangements and agreements with other agencies and law enforcement to obtain necessary information and records for LSBC investigations including the investigations noted in case study #5. For example, the LSBC has had a formal Memorandum of Understanding with the Royal Canadian Mounted Police (the "RCMP") for more than 20 years.

    c. Ability to compel information and responses from lawyers. The duty to cooperate requires lawyers to produce requested records, provide full and substantive written responses to questions, and attend interviews[64]. A lawyer must produce information and records to the LSBC regardless of a potential claim of privilege by the client, as the LSBC is entitled to receive and review privileged information during an investigation[65]. This puts the LSBC in a unique position, as other agencies and law

[62] In addition to referrals from the audit program, the LSBC also receives complaints from various sources, including the public, other lawyers, institutions, the courts and law enforcement. Section 26(1) of the *Legal Profession Act* states as follows:

> "A person who believes that
> (a) a lawyer, former lawyer or articled student has practised law incompetently or been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules, or
> (b) a law firm has been guilty of professional misconduct, conduct unbecoming the profession or a breach of this Act or the rules
> may make a complaint to the society.

[63] *Legal Profession Act,* section 26(4) to (6).

[64] Rules 3-5(7) and 3-5(8) of the Law Society Rules. The LSBC has the authority under Rule 3-6(1) to impose an administrative suspension on a lawyer who fails to produce the requested information and records, provide written responses or attend an interview.

[65] *Legal Profession Act,* s. 88(1.1) states: "A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege."

enforcement, with limited exceptions, are not entitled to review privileged information without judicial authorization or a waiver of privilege by the clients[66].

d. Ability to obtain an order from the Chair of its Discipline Committee[67] to conduct a forensic investigation of the books, records and accounts of a lawyer's entire law practice where there are reasonable grounds to believe that a discipline violation may have been committed. The order is obtained without notice to the lawyer to minimize the risk of evidence being tampered with, concealed or destroyed. The order authorizes the LSBC to make copies of physical records of the practice and to make a forensic copy of the electronic records, including copying computer hard drives, laptops and cellular phones used in the practice[68].

e. Ability to take quick action in the investigative stage if there are reasonable grounds to believe that extraordinary action is necessary to protect the public. The LSBC may seek interim undertakings from a lawyer not to engage in the practice of law or to practice in compliance with certain restrictions or conditions. In most cases, the undertakings sought by the LSBC have been successfully obtained. When a lawyer is not prepared to provide the undertakings sought, the LSBC may bring interim proceedings against the lawyer seeking a suspension or the imposition of restrictions/conditions on their practice[69]. With limited exceptions, the interim measures obtained by the LSBC whether by way of undertakings or an order made by an interim action board are made public[70].

[66] Section 88(1.1) of the *Legal Profession Act* states, "A person who is required under this Act or the rules to provide information, files or records that are confidential or subject to a solicitor client privilege must do so, despite the confidentiality or privilege."

[67] The LSBC Discipline Committee is composed of benchers and non-bencher lawyers. It considers complaints referred to it by the Investigations department after the conclusion of the investigation and may order disciplinary action, including the authorization of a citation. A citation sets out the allegations of the discipline violations that the LSBC has the onus of proving at a hearing.

[68] Rule 4-55 of the Law Society Rules

[69] Rule 3-10 of the Law Society Rules

[70] The LSBC maintains a Lawyer Directory on its website. Interim suspensions, restrictions and conditions are displayed on the lawyer's profile on the Lawyer Directory.

38. In 2024, 24% of open investigation files were in respect to AML/CTF related obligations. Similarly, in 2024, 14.5% of the allegations against lawyers before the LSBC Tribunal involved AML/CTF related obligations[71].

39. The LSBC has a range of effective, proportionate, and dissuasive sanctions available for AML/CTF breaches. In seeking a sanction, the LSBC is guided by sanctioning principles and prior relevant decisions. Following a hearing before a panel of the LSBC Tribunal or, by consent in a consent agreement, the sanctions available include a fine of up to $50,000, conditions or limitations on practice, suspension from the practice of law, or disbarment[72]. In addition, a matter may be concluded with the legal professionals' resignation and their undertakings including not to reapply for admission for a set period. A list of recent AML/CTF related cases is set out at **Schedule 2**.

40. From 2017 to April 2025, the sanctions imposed on legal professionals by the LSBC include:

    a. Thirty-one disbarments (revocations);

    b. 33 resignations accepted in the face of discipline, with prohibitions against reapplying to practice law for a certain number of years;

    c. Ninety-eight suspensions; and

    d. Twenty-one restrictions imposed on the right to operate a trust account or handle trust funds.

41. The LSBC also has an Administrative Penalty Program in place to address certain breaches of the Law Society Rules, including the client identification and verification rules and the cash transaction rule[73].

42. Further, the LSBC recognizes the role of law enforcement when a legal professional has engaged in criminal conduct. Legal professionals may be prosecuted for money laundering and terrorist financing offences committed in the course of their law practice should they contravene the *Criminal Code of Canada*[74]. The LSBC has the authority to

[71] 2024 LSBC Tribunal Annual Report, p. 16

[72] Section 38(5) of the *Legal Profession Act*

[73] Part 4, Division 6 of the Law Society Rules. The administrative penalties range from $3,000 to $10,000. Further information is available on the LSBC website at Administrative Penalties.

[74] Sections 83.02, 83.03, 354 and 462.31 of the *Criminal Code of Canada,* R.S.C. 1985, c. C-46

refer a matter to law enforcement when it has information that may disclose a criminal offence has been committed[75]. The LSBC makes the referral to the appropriate law enforcement agency while properly addressing solicitor-client privilege. In addition, during an investigation, the LSBC encourages complainants and witnesses to make their own report to law enforcement if they have concerns about criminal conduct, including in respect to a legal professional. Since 2021, the LSBC has referred five matters to law enforcement.

Case Study #6

LSBC's Efforts Disrupt Money Laundering and Result in Disbarment

In *Law Society of BC* v. *Pelletier,* 2023 LSBC 03, 2023 LSBC 47, the respondent used his trust account to move over $30 million when he knew the funds were proceeds of securities fraud being investigated by the US authorities. The respondent moved funds through his trust account, as directed by the clients, including using funds to purchase real estate and luxury goods. The respondent charged his clients fees of about $900,000, in the absence of performing substantive legal services related to the funds he moved through his trust account.

A hearing panel of the LSBC Tribunal found that the respondent knowingly possessed the proceeds of securities fraud and was actively assisting his clients to hide, use and benefit from the illicit proceeds. The panel ordered that the respondent be disbarred.

The case is another example of the effectiveness of the LSBC audit program in detecting AML related conduct. Although the respondent went to great lengths to conceal his misconduct, including altering his accounting records, the LSBC auditor was able to detect the conduct concerns during a routine compliance audit.

The case is also an example of the LSBC's ability to conduct robust and effective investigations with the extensive investigation powers it has even when a respondent actively attempts to conceal the misconduct. The investigation uncovered the respondent's attempts at obfuscation including the purchase of 20 burner phones over an 18-month period, inaccurate descriptions in the trust ledger (e.g. referring to funds as "payment of retainer", "settlement funds"), and the use of anonymous email addresses and nicknames.

[75] Rules 3-3(5) and 4-8(4) of the Law Society Rules permit the LSBC to refer a matter to law enforcement whether there is evidence of an offence.

G. Collaboration and Information Sharing (FATF Recommendation 1)

43. The LSBC supports initiatives that enhance inter-agency collaboration and cooperation where appropriate. The LSBC has developed relationships with several organizations and regulators, such as the B.C. Securities Commission, the U.S. Securities and Exchange Commission, and the B.C. Financial Services Authority[76]. In addition, the LSBC fosters collaborative relationships with law enforcement, including the RCMP. Collaboration serves multiple regulatory objectives including:

    a. Assists with the proper disclosure of information and records to the LSBC for the purposes of an investigation and any disciplinary proceedings arising from it;

    b. Provides other entities a better understanding of the LSBC's role, with the LSBC encouraging others, including law enforcement, to refer conduct concerns about legal professionals to the LSBC; and

    c. Provides an opportunity for the sharing of information that assists in understanding new and emerging trends and typologies related to money laundering and terrorist financing.

44. The LSBC also collaborates with Canada's federal government as an active member of the Government of Canada and Federation Joint Working Group since its inception in 2019. The LSBC has also been proactive in initiating discussions with the Financial Transactions and Reports Analysis Centre of Canada ("FINTRAC") to explore the means by which there could be information sharing from FINTRAC to the LSBC to enhance the LSBC's regulatory efforts. These discussions are ongoing.

45. On a provincial level, the LSBC is a principal partner in the Counter Illicit Finance Alliance of British Columbia (the "CIFA-BC")[77]. Led by the RCMP, CIFA-BC is a financial information sharing partnership between public and private organizations, with a common goal of combatting money laundering and other financial crimes. The partners of CIFA-BC collaborate to lawfully share information and ideas, including discussing emerging trends and typologies related to money laundering. The LSBC's active participation in CIFA-BC is another example of the LSBC's commitment to its AML/CTF work.

[76] The BC Financial Services Authority is responsible for the supervision and regulation of the financial service sector in the province, including mortgage brokers, real estate professionals, pensions, trusts and credit unions.

[77] Further information is available at CIFA-BC.

III. Conclusion

46. The LSBC has demonstrated a high level of commitment to effective AML/CTF regulation of legal professionals in British Columbia and is a leading regulator in this area. The LSBC understands the risks and vulnerabilities of legal professionals being used by criminals and keeps informed of emerging and new trends that may impact those risks and vulnerabilities.

47. The LSBC has imposed mandatory AML/CTF obligations on lawyers and there is appropriate, risk-based supervision of legal professionals, with proactive detection and monitoring, coupled with robust investigations and proportionate sanctions.

48. The LSBC recognizes that the exclusion of legal professionals from the federal government's PCMLTFA, which exclusion is consistent with the constitutional principles in Canada, results in legal professionals not being required to report suspicious transactions to FINTRAC - a departure from the AML/CTF regime in place in other countries. However, the LSBC encourages the Reviewers to consider and assess the high degree of effectiveness of the LSBC, as the competent authority, in disrupting potential money laundering through the use of legal professionals. This effectiveness is demonstrated in the LSBC's many AML related public disciplinary decisions.

49. The LSBC is a dedicated partner in the AML/CTF fight in Canada, working collaboratively with others in both the private and public sectors. The LSBC believes that the current focus on self regulation and collaboration, as endorsed in the Cullen Final Report, is the most appropriate means of continuing to advance shared AML/CTF objectives.

Schedule 1 – LSBC AML/CTF Educational Resources

Date	AML/CTF Educational Publication and Resource
	Client ID & Verification and Anti-Money Laundering Risk Management resources webpage
	Anti-Money Laundering Measures Webinar (published, 2020)
	Ant-Money Laundering Measures Program, (published 2024)
	Anti-Money Laundering Video, (published 2024)
	Anti-Money Laundering 2019 (CLE-TV)
	Client Identification, Verification and Source of Money Checklist (updated annually since 2008)
	Client ID and Verification - FAQs
Mar. 2025	Discipline Advisory, Trust account only for legal services
Mar. 2025	Canada lists more transnational criminal organizations as terrorist entities
Feb. 2025	Anti-money laundering: settlement agreements
Feb. 2025	Protecting your firm from employee theft
Dec. 2024	Stay alert for frauds
Sept. 2024	Free anti-money laundering measures webinar
Aug. 2024	Discipline Advisory, Client ID and Verification
July 2024	Ten top tips for client identification and verification
June 2024	New Video: Preventing money laundering in your legal practice
May 2024	Guidance for virtual verification of your client's identity
April 2024	Using video conferencing technology
Mar. 2024	Client verification rule changes
Feb. 2024	How to avoid funds transfer fraud
Dec. 2023	Stay alert: Holiday season is prime time for fraud
Nov. 2023	BC government warns of new scam targeting law firms
Sept. 2023	Funds transfer fraud: it can really happen to you

Date	AML/CTF Educational Publication and Resource
May 2023	New webinar: Land Owner Transparency Registry filing requirements…Three more BC law firms fall victim to funds transfer frauds
Mar. 2023	Protect yourself against real estate identity frauds
Dec. 2022	Attention real estate lawyers: Value and identity frauds continue; Be Alert! Holiday coverage and fraudsters
July 2022	July 2022 – Cullen Commission final report
March 2022	Alert: bait and switch scam involving certified cheques; Additional sanctions; Real estate fraud
Feb. 20.22	Reminder land owner transparency reports due date; Avoid becoming a victim of cybercrime
Fall 2021	Fraud 101 for lawyers
Summer 2021	Real estate transactions – know your client primer
Spring 2021	Forming companies and other structures – managing the risk
Mar. 2021	Random calls and emails inquiring about shelf companies
Feb. 2021	Discipline Advisory, Country / Geographic Risk
Fall 2020	Client identification and verification – addressing your questions,
June 2020	Discipline Advisory, Securities Fraud: Micro-cap Stocks
Spring 2020	Know your client – addressing questions and risks,
Dec. 2019	Client verification and sources of money rules
Winter 2019	New client verification and source of money requirements
Fall 2019	Rule amendments enhance Law Society's anti-money laundering measures
Summer 2019	Anti-money laundering cash transaction rule essentials
Nov. 2019	Real estate identity frauds
Aug. 2019	Fraudsters continue to target BC lawyers
July 2019	New trust account and cash rule changes
Apr. 2019	Discipline Advisory, Private Lending
Apr. 2019	Changes coming to no cash and trust account rules

Date	AML/CTF Educational Publication and Resource
Pre-2019	Pre-2019 LSBC AML/CTF publications summarized in PDF  LSBC - Education and Guidance - Pre-
Apr. 2018	Discipline Advisory, Lawyers are Gatekeepers
Feb. 2018	Discipline Advisory, Client ID and Verification
Nov. 2013	Discipline Advisory, Know your obligations before accepting cash

Schedule 2 – LSBC's AML/CTF Related Cases

Case and citation	Facts and decision	Sanction/Outcome
Gregory G. Dureault February 28, 2025 Summary	Rule 3-7.1 Consent Agreement • Used trust account without making reasonable inquiries and/or without sufficient connection to legal services • Dupe in possible facilitation of crime, dishonesty, or fraud • Failure to comply with CIV ("Client Identification and Verification") Rules	• Suspension (3 months)
LSBC v. Barker 2025 LSBC 04	• In 11 real estate matters where a notorious alleged fraudster was the main point of contact, Respondent failed to be on guard against being a dupe when he failed to make reasonable inquiries in suspicious circumstances[78]	• Sanction hearing pending
Naeem-ul-Nushad Ahmed December 23, 2024 Summary	Rule 3-7.1 Consent Agreement • Acted without making reasonable inquiries in the face of suspicious circumstances, including receiving and disbursing funds through trust [78]	• Suspension (1 month) – sanction significantly reduced on account of investigative delay
LSBC v. Wang 2023 LSBC 38 (F&D) 2024 LSBC 42 (s. 47 review)	• Used trust account to disburse funds without providing substantial or any legal services, making reasonable inquiries, or making a record of the inquiries made • Also, CIV and accounting Rules breaches[78]	• Sanction hearing pending
LSBC v. Gregory	• Respondent failed to record and make reasonable inquiries about the subject matter	• Suspension (2 months)

[78] **Investigation resulted from compliance audit referral**

2021 LSBC 34 (F&D) 2022 LSBC 17 (DA) 2024 BCCA 350	and objectives of his retainer. Also, failed to make reasonable efforts to obtain or record the client's identification information.	
Lee Tupper May 10, 2024 Summary	Rule 3-7.1 Consent Agreement • Disbursed funds from trust where he had not provided legal services in regard to the disbursements[78]	• Suspension (2 weeks)
Shane Dugas May 10, 2024 Summary	Rule 3-7.1 Consent Agreement • Improperly used trust account in circumstances unrelated to legal services • Also, misappropriation or improper handling of trust funds (deposited to personal bank account), withdrew funds from trust creating shortages, which he failed to eliminate and report, failed to maintain proper accounting records, misrepresentations to LSBC in trust reports, deposited government payments to trust, failed to remit GST, PST, and payroll deductions, and breach of trust condition[78]	• Suspension (5 months) • Referral to Practice Standards • Condition to not operate trust account without approved 2nd signatory
LSBC v. MacDonald 4-29 Accepted by DC October 5, 2023 MacDonald Summary	• Allowed funds to flow through the firm's trust account in suspicious circumstances, without making reasonable inquiries or recording the results of inquiries. Continued to allow the use of the firm's trust account when he ought to have known it was being used to facilitate unlawful or dishonest conduct • Also CIV Rules breaches [78]	• Resignation and undertaking not to practice for 15 years
LSBC v. Kates	• Over a 1-month period, permitted approx. $9.5 million CAD to be paid into/withdrawn from trust when the funds were not directly related	• Suspension (2 months)

2023 LSBC 40	to legal services and he did not make reasonable inquiries about the circumstances of the transactions. • Also, assisted his client to circumvent a bank's refusal to transfer $6.4 million USD to the US when there were concerns about the legality of doing such a transfer (due to federal US law re: cannabis). Further, breach of trust conditions/escrow terms, misleading/incomplete response to LSBC and CIV breaches.	• $3,500 costs
LSBC v. Dean 4-29 Accepted by DC November 17, 2023 Dean Summary	• Permitted the use of his firm's trust accounts to receive or disburse, or both, $1.1 million USD and $170,000 CAD without providing any substantial legal services or making reasonable inquiries into the source of the funds. • Also, engaged in activities he knew or ought to have known assisted in dishonesty, crime, or fraud, by acting for companies in a fraudulent scheme to manipulate the market shares of another company and effect the illegal sale of an unregistered stock and failed to comply with CIV Rules.	• Resignation and undertaking to not re-apply, etc. for 8 years • Was already non-practicing for 4 years at time of undertaking (total undertaking of 12 years)
LSBC v. Weiser 2023 LSBC 32 (F&D) 2024 LSBC 18 (DA)	• Respondent used his trust account for personal financial benefit and in the absence of substantial or any legal services to receive and disburse $198,000 of his own funds, to pay himself personally from the proceeds of an unlicensed cannabis business. • Also, accounting Rules breach, misleading others and the LSBC, and conflicts of interest.	• Disbarred • Ungovernable • Costs of $16,668.75
LSBC v. Guo 2023 LSBC 28 2024 LSBC 11	• Permitted trust account to be used without providing any substantial legal services, making reasonable inquiries, or recording inquiries made. • Also, conflict of interest, accounting Rules breaches/CIV, making misrepresentations to	• Disbarred • Ungovernable • Costs of $45,497.95

	LSBC, failed to reply fully to communications from LSBC.	
Simon Biancardi December 19, 2023 Summary	Rule 3-7.1 Consent Agreement • Used trust account in circumstances that triggered a positive duty to make reasonable inquiries • CIV Rules breaches • Conflict of interest in acting for both borrower and lender	• Suspension (6 months) • Undertaking not to receive/ handle trust funds, not to open trust account, and not to practice in real estate law
LSBC v. Pelletier 2023 LSBC 03R 2023 LSBC 47	• Assisted in/encouraged dishonesty, crime and fraud by using his trust accounts to receive/disburse approx. $24 million CAD and $5.4 million USD, on behalf of clients, when he knew that the clients were being investigated for securities fraud by the US SEC and that some or all of the funds were proceeds of securities fraud. • Other related conduct included breaches of CIV and trust accounting Rules.[78]	• Disbarred
LSBC v. Yen, 2020 LSBC 45 (F&D) 2021 LSBC 30 (DA) 2023 LSBC 02 (s. 47 review) 2023 LSBC 34 (review decision on costs) 2024 BCCA 416	• Over a period of approximately two years Respondent used or permitted the use of her firm's trust accounts to receive approximately $10 million USD and $1.27 million CAD and disburse approximately the same amount in 15 separate deposits and 25 separate withdrawals or transfers without providing substantial legal services/making reasonable inquiries or recording results.[78]	• Suspension (3 months) • Parties to bear own costs

LSBC v. Cole 2021 LSBC 40 (F&D) 2022 BCCA 55 (Law Society Appeal – dismissed) 2023 BCCA 199 (Respondent Appeal – dismissed) 2024 LSBC 03 (DA) 2025 LSBC 02 (DA Review)* On appeal	• Counselled his client to use his girlfriend as a nominee to take part in a private placement financing contrary to the directive of the securities regulator. The purpose of the Respondent's advice was to circumvent the directive of the regulator that prohibited insiders, such as the client, from taking part. • Sanction hearing order of 4- month suspension + $20,000 fine (2024 LSBC 03) overturned on review (2025 LSBC 02). [78]	• Review of sanction hearing decision on appeal to BCCA
LSBC v. May 2021 LSBC 35 (F&D) 2023 BCCA 218 (Appeal of F&D) 2023 LSBC 43 (F&D - rehearing of allegations 1(c) and 2(c) for fresh determination) 2024 LSBC 25 (DA)	• The Respondent did not make reasonable inquiries about his clients, two individuals and two companies, and the purposes and objects of his retainer with them. Also, misled the court, relied on misleading affidavits, and failed to comply with direction from the court and CIV obligations.	• Suspension (2 months) • Costs of $20,767.81
LSBC v. Huculak 2022 LSBC 26 (F&D) 2023 LSBC 05 (DA)	• Over 4-year period, used his trust account to receive and disburse total of approx. $4.4 million without making reasonable inquiries in relation to real estate transactions that were objectively suspicious, failed to be on guard, and did not decline to act until reasonable basis to believe transactions were legitimate. Client was known drug dealer/suspected of murder • Also, CIV breaches and misappropriation	• Disbarment • Costs of $10,001.88

Gregory Yanke June 9, 2023 Summary	Rule 3-7.1 Consent Agreement • In relation to six clients, used trust account in absence of legal services and without making reasonable inquiries in the face of suspicious circumstances. Assisted a client in circumstances which he knew could be considered preparation for a "pump and dump" securities fraud. One of the lawyer's clients who financially benefited from the share purchase transactions funnelled through the lawyer's trust account was a close family member of the lawyer • CIV Rules breaches[78]	• Suspension (9 months) • Undertaking not to handle trust funds or operate a trust account
Randle Howarth February 15, 2024 Summary	Rule 3-7.1 Consent Agreement • Improper use of trust account without providing substantial legal services, failure to make reasonable inquiries • More than $300 of own funds in trust • Conflict of interest where personal interest in venture • Misleading responses to LSBC	• Suspension (10 weeks)
Richard Liu December 14, 2022 Summary	Rule 3-7.1 Consent Agreement • Used trust account without making reasonable inquiries and/or without sufficient connection to legal services • Conflicts of interest • CIV Rules breaches[78]	• Suspension (3 months)
Chilwin Cheng November 28, 2022 Summary	Rule 3-7.1 Consent Agreement • Used trust account in the absence of legal services and without making reasonable inquiries regarding the source and nature of funds for clients subject to a BC Securities Commission freezing order.[78]	• Suspension (2 months)

LSBC v. De Lange 4-29 Accepted by DC November 7, 2022 De Lange Summary	• Used or permitted the use of his firm's trust account to receive and disburse funds when he failed to be on guard against becoming a dupe and failed to make reasonable inquiries and record same. Also, failed to decline to act or continued to act in suspicious transactions until there was a reasonable basis for believing that the transactions were legitimate. • Also, accounting Rule breaches, conflict of interest, breaches of trust conditions, failed to deposit funds, failed to document who was his client/who he was authorized to take instructions from, failed to eliminate and report trust shortages and improper trust withdrawals.[78]	• Resignation and undertaking not to practice for 15 years
LSBC v. Osei 2022 LSBC 43	• Received and disbursed $2,147,311.92 through his trust account when there was little or no legal work performed, and failed to make reasonable inquiries in connection with the transactions. • Also, failed to ensure that unrepresented parties obtained independent legal advice on three occasions. [78]	• Suspension (4 months) • costs of $3,500
LSBC v. Alfonso 2022 LSBC 32	• Used his trust account to disburse funds to cover his personal expenses when he had not provided substantial or any legal services and by failing to withdraw funds belonging partly to him as soon as practicable from his trust account. • Also, maintained over $300 of his own funds in trust, acted in a conflict of interest, accepted gifts when the clients had not received independent legal advice and failed to comply with CIV Rules.[78]	• Fine of $20,000 • Costs of $3,500
Alina Nikolaeva	Rule 3-7.1 Consent Agreement	• Suspension (2 weeks)

August 31, 2022 Summary	• Used trust account in the absence of legal services • CIV Rules breaches[78]	
Sonia Hayer March 5, 2021 Summary	Rule 3-7.1 Consent Agreement • Used trust account in a way that may have promoted dishonesty, crime, or fraud • Failed to perform CIV • Failed to report trust shortage • Permitted non-lawyer to sign trust cheques on her behalf • Permitted staff to use her Juricert password and signature • Made misleading representations to LSBC[78]	• Suspension (6 months) • Undertaking to cease working with her paralegal
LSBC v. Uzelac 2020 LSBC 58	• Over a one-year period, received and disbursed $1,167,000 through his trust account on behalf of a client without making reasonable inquiries about the circumstances and without providing substantial legal services in relation to those funds.	• Suspension (4 months) • Costs of $1,000
LSBC v. Hammond 2020 LSBC 30	• Over a three-month period, a lawyer received and disbursed US$474,000 through his trust account without providing legal services in connection with the trust matter and without making adequate inquiries or a record of his inquiries. The matter related to an escrow/stakeholder arrangement and had been referred to him by another lawyer whom he had known and trusted for over 30 years.	• Suspension (2 weeks)
LSBC v. Daignault, 2020 LSBC 18	• Received and disbursed funds through trust account on the instructions of a client without providing any substantial legal services or advising the depositor that he wasn't protecting their interests. In one instance, the share transaction was not completed and the	• Suspension (2 weeks) • No costs sought or ordered

	Respondent did not return the funds to the depositor.	
LSBC v. Hsu 2019 LSBC 29	• While acting for two clients in finance and securities matters over approximately five years, allowed $14.3 million to flow through the trust account of the firm she worked at. Engaged in activities that she ought to have known assisted in or encouraged dishonesty or fraud by making changes to disclosure documents used to solicit funds from investors, prepared investment documentation which provided for investors to receive shares which had no value, used trust accounts to receive and disburse investor funds, and failed to make reasonable inquiries. • Also, failed to perform legal services to standard of competent lawyer.[78]	• Suspension (3 months) • Practice restriction that she not practice in the area of securities law until she is relieved of the restriction. • Costs of $1,000
LSBC v. Nejat Rule 4-29 Accepted by DC October 24, 2019 Nejat Summary	• Assisted in dishonesty, crime, or fraud by disbursing funds from his trust account without verifying client identity. • Other misconduct included misappropriation or improper withdrawal, misleading conduct, failure to provide quality of service, practice of law while suspended, breach of accounting Rules and failure to comply with CIV Rules.[78]	• Resignation and undertaking not to practice for 12 years
LSBC v. Gurney 2017 LSBC 15, (F&D) 2017 LSBC 32 (DA) 2017 LSBC 42 (costs) 2019 LSBC 23 (s. 47) 2020 LSBC 35 (extension of time for s. 47)	• Allowed his trust account to be used to receive and immediately disburse a total of $25,845,489.87 on behalf of his client, without making reasonable inquiries about the circumstances and without providing any substantial legal services in connection with the trust matters.[78]	• Suspension (6 months) • Return to practice with conditions re regulation of trust account • Costs of $25,845

Discipline Advisory

Lawyers are gatekeepers

April 10, 2018

The Law Society takes its role in combatting money laundering and other illegal activity very seriously. A recent decision involving a member highlights the repercussions for lawyers if they allow their trust accounts to be used without making reasonable inquiries in suspicious circumstances.

LSBC v. Gurney

Between May and November 2013, Donald Franklin Gurney used his trust account to receive and disburse a total of $25,845,489.87 on behalf of a single "client." He did so without making reasonable inquiries about the circumstances related to the funds, including the subject matter and objectives of his retainer, and without providing any substantial legal services in connection with the trust matters. Gurney was paid 0.1% ($25,845) of the funds he handled.

The Law Society identified the transactions during a routine trust account audit, conducted an investigation and issued a citation.

In its decision (2017 LSBC 15), the hearing panel noted that lawyers have an important gatekeeper function with regard to trust accounts. This function arises in part from the fact that transactions that occur through a lawyer's trust account in the course of legal services may be protected by solicitor-client privilege. The purpose of the privilege is to allow open and candid communications between a lawyer and client. The purpose of the privilege is not to facilitate suspicious transactions.

The gatekeeper function requires a lawyer to use trust accounts for legitimate commercial purposes that are connected to the lawyer's professional functions. Lawyers have a positive duty to make reasonable inquiries prior to becoming involved in a transaction. The hearing panel noted earlier Law Society decisions that stated that where the circumstances of a proposed transaction are such that a lawyer should reasonably be suspicious that there are illegal activities involved under Canadian law or laws of other jurisdictions, it is professional misconduct to become involved until such time as inquiries satisfy the lawyer on an objective test that the transaction is legitimate. The Law Society need not prove illegality to prove misconduct.

In this case, the hearing panel found that Gurney committed professional misconduct by failing to make reasonable inquiries in the face of "a sea of red flags" before allowing his trust account to be used.

There were a number of factors that made the transactions objectively suspicious, including:

- Gurney had no previous dealings with any of the parties to the transactions;
- Gurney's practice did not involve unsecured commercial lending, as ostensibly took place in this case;
- all of the transactions dealt with offshore lenders to a new client;

- no legal advice was sought from Gurney;
- the transactions involved millions of dollars and did not require the use of a lawyer's trust account to complete;
- Gurney's fee was based on a percentage of the funds received and disbursed through his trust account.

The hearing panel ordered Gurney to serve a six-month suspension from the practice of law and to pay to the Law Society $25,845 as a disgorgement of the amount he was paid in order that he not benefit financially from his misconduct (2017 LSBC 32).

The Law Society's auditors actively look for suspicious trust account activity when conducting compliance audits. If you are concerned about a proposed transaction, ensure you perform your due diligence at the outset and do not hesitate to contact a Law Society Practice Advisor for advice.

Discipline Advisory

Client ID and verification

February 8, 2018

Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when providing legal services. Failure to comply with the rules can have significant disciplinary, insurance and financial consequences.

The rules are a key part of the Law Society's efforts to combat money laundering and terrorist financing. They contain basic due diligence obligations that help reduce the risk of lawyers facilitating dishonest or illegal activity. Lawyers must comply with the rules whether or not suspicious circumstances are present.

Recently, the Discipline Committee has considered several cases arising from lawyers breaching the rules. This advisory is intended to provide guidance to the profession in an effort to ensure compliance with the rules.

Identification vs. verification

Identification and verification are separate, but related, concepts in the rules. The client identification rules require a lawyer to make reasonable efforts to collect basic identification information about a client upon being retained. There are different obligations for individuals and entities.

The client verification rules apply when a lawyer receives, pays or transfers money on behalf of a client, or gives instructions on behalf of a client in respect of the receipt, payment or transfer of money. The verification rules require a lawyer to take reasonable steps to verify the identity of a client using what the lawyer reasonably considers to be reliable, independent source documents, data or information. The requirements for verifying individuals and entities vary according to the type of transaction and entity.

Lawyers should note that the rules use a number of defined terms, including "client," "financial institution," "financial transaction," "interjurisdictional lawyer," "money," "organization," "public authority" and "reporting issuer." Lawyers should pay close attention to the definitions, as they are in some cases broader than the common usage (especially "client," "financial transaction," and "money").

Non-face-to-face transactions

Financial transactions on files where the lawyer and client never meet in person represent the highest risk of fraud or lawyer facilitation of other dishonest or illegal activity. It is imperative that lawyers familiarize themselves with and follow the requirements set out in Rule 3-104 for such transactions.

Where the non-face-to-face client is located elsewhere in Canada, Rule 3-104(2) requires the lawyer to obtain an attestation from a commissioner of oaths or a guarantor to verify the client's identity.

Where a lawyer is retained by a client located outside of Canada who they do not meet in person, Rules 3-104(5) and (6) require the lawyer to enter into a written agreement or arrangement with an agent to verify the client's identity and to obtain the information gathered by the agent under the agreement or arrangement. Simply asking the client to take the relevant documents to a foreign notary or equivalent of their choice is not sufficient. Fraudsters can and have used the names of real lawyers and notaries — who are not party to the scam — to produce phony attestations. Lawyers must satisfy themselves, through direct contact with the agent, that the agent is who the agent claims to be.

There have been a number of recent Discipline Committee decisions involving non-face-to-face transactions where lawyers did not have a written agency agreement or arrangement. In one, a lawyer acting for a new client outside of Canada on a real estate transaction sent the client a package of documents, including an "Identification and Verification Document," for the client's review and signature before a notary. The lawyer did not know to whom the client would take the documents, had no direct contact with the notary apart from receiving the signed documents by email and did not enter into a written agreement or arrangement with the notary. The lawyer was required to attend a conduct review. Conduct reviews form part of a lawyer's professional conduct record.

In another case, the lawyer acted for an existing, but never verified, client who at all material times was outside Canada. The lawyer's office sent a package of documents to be notarized, had telephone contact with the foreign notary and received the signed and sealed identifying documents; however, the lawyer did not have a written agreement or arrangement with the notary. The lawyer was required to attend a conduct meeting.

No exemption for family and friends

Obtaining client identification information and verification documents may seem unnecessary in the case of family, friends or long-term acquaintances or business associates, but there is no exemption for such clients.

While client identification and verification usually only has to be done once for a client, a lawyer who has not previously complied with the rules for the client must do so regardless of who the client is or the nature of the client's relationship with the lawyer.

Lawyers have been directed to attend conduct meetings and conduct reviews for failing to identify or verify the identity of clients, even where the lawyers have known the clients for decades. In one recent decision, a lawyer was directed to attend a conduct review after failing to verify the identities of clients who were the brother and sister-in-law of the lawyer's former law partner.

Exemptions

Rule 3-101 contains exemptions to the verification requirements. There appears to be a perception among some lawyers that blanket exemptions exist for entire practice areas, such as personal injury or criminal defence. No such exemptions exist, nor is there an exemption for pro bono work that involves a financial transaction.

Each client and financial transaction must be considered separately; an exemption that applies to the lawyer's receipt of money may not apply to the lawyer's payment of money. Both receipt and payment would need to be exempt for the lawyer not to be required to verify the client's identity. If in doubt about the application of an exemption, a lawyer should verify the client's identity.

If a lawyer considers that an exemption applies and verification does not need to be conducted, the relevant exemption and the basis for the lawyer's conclusion should be recorded in the file.

Record keeping and retention

The record keeping and retention obligations are central to the rules. In two recent Discipline Committee decisions, lawyers were directed to attend conduct reviews after verifying their clients' identities but failing to retain copies of the documents used to do so.

Rule 3-107 requires a lawyer to retain a record of the information and any documents obtained for the purposes of client identification, and for identifying directors, shareholders and owners. In addition, a lawyer must retain a copy of every document used to verify the identity of any individual or "organization" (as defined in the rules). The records and documents must be retained for the longer of the duration of the lawyer-client relationship or six years following the completion of the work for which the lawyer was retained.

Rule 3-102 requires a lawyer providing legal services in respect of a financial transaction to take reasonable steps to verify the client's identity using what the lawyer reasonably considers to be reliable, independent source documents, data or information.

If the lawyer is unable to obtain reliable, independent source documents, but has, for example, obtained reliable, independent information, and believes it is still reasonable to act for the client in the circumstances, the lawyer should expressly note that fact, the basis for that conclusion and the information relied on in the file. Absent exceptional circumstances, a client's identity should be verified by reliable, independent source documents.

Practice checklist and FAQs

For more information, refer to the Client Identification and Verification Procedure Checklist in the *Practice Checklists Manual* and the extensive list of FAQs on the topic available on the Law Society website. The checklist includes a sample attestation form for verification of a client's identity in Canada (Appendix I) and a sample agreement with an agent for verification of identity if a client is outside of Canada (Appendix II). A free online course is also available. For advice, contact Barbara Buchanan, QC, Practice Advisor, at 604.697.5816 or bbuchanan@lsbc.org.

Discipline Advisory

Know your obligations before accepting cash

November 8, 2013

Editor's notes:

1. On July 1, 2015, the Law Society Rules were updated. Where references are made to former rules in this advisory, please replace as follows:

- Rule 3-51.1 with new Rule 3-59(3)
- Subrule (3.1) with new Rule 3-59(4)
- Rule 3-61.1 with new Rule 3-70
- Subrule (2)(b) with new Rule 3-59(2)(b)(ii)

2. A link to a 2014 *Benchers' Bulletin* article was added.

The Law Society has consistently recognized that the legal profession must take steps to prevent money laundering and, since 2004, has had a rule limiting the amount of cash that lawyers may accept.

Under Law Society Rule 3-51.1 (the "no-cash rule") lawyers are generally precluded from accepting an aggregate amount of $7,500 or more in cash with respect to any one client matter or transaction. There are, however, very limited circumstances under which a lawyer can accept cash in excess of that amount. These exceptions are set out in subrules (2) and (3.1) and include instances where a lawyer receives the cash from a law enforcement agency; pursuant to a court order; or for professional fees (including a retainer), disbursements, expenses or bail.

Some lawyers have expressed uncertainty about how the exceptions ought to be applied and what constitutes acceptance of $7,500 or more in cash with respect to any one client matter. The following Q&As may help when considering whether, and in what circumstances, you can accept or deal with cash.

Was the cash tendered for a specific purpose?

When accepting cash for fees, disbursements, expenses or bail, it would be prudent to:

(1) turn your mind to the purpose for which you are receiving the cash, and document the circumstances and any client instructions;

(2) ensure that the amount received for a retainer is commensurate with the services to be provided (i.e., don't let a

client stash a $50,000 retainer with you for a $5,000 matter);

(3) ensure that you have appropriate file systems in place so that, if you received the cash for a retainer but the client later retains new counsel or your retainer is otherwise terminated, you do not inadvertently forward the retainer funds to new counsel or return them to the client by way of a trust cheque, instead of cash, unless the rule permits you to do so; and

(4) ensure that you have appropriate accounting systems in place to document and track the cash transactions, in particular when you deposit a mix of cash and non-cash funds into trust that could lead to difficulty in monitoring use.

Was the cash tendered incrementally?

The no-cash rule applies even when cash is received incrementally, so it is important to track receipt of cash in aggregate. It is prudent to track totals of cash received on any particular matter to make sure you do not find yourself over the acceptable limit.

Lawyers are obligated to record all cash payments (to general or trust) and cash withdrawals (from trust) in a cash receipt book of duplicate receipts that identifies specific information (Law Society Rule 3-61.1). Each receipt must be signed by the lawyer who receives or pays out the cash or an individual authorized by that lawyer to sign the receipt on the lawyer's behalf, and by the person from whom the cash is received or paid out. Duplicate receipts are kept by the practice and the original given to the payer.

If the cash was received pursuant to a court order, what does the order say in this regard?

In *Burgess (Re)*, 2011 LSBC 03, the hearing panel made clear that, in order to qualify for the court order exception in subrule (2)(b), the terms of the order must specifically provide for a cash payment. It is not enough that an order cover the movement or payment of funds.

Ultimately, if you need, or choose, to deal with cash, you should be prudent. It is a best practice to document the permissible reason for accepting the cash and later ensure that it is used for this reason. Be sure to track the cash in and out and ensure that, if it is received pursuant to one of the exemptions, the exemption actually applies.

Failing to know your obligations with respect to the receipt of cash, or not understanding them, is not a shield to disciplinary action. For more information, read the following articles on the Law Society website: If you have questions, contact a practice advisor.

Cash transactions and records, Practice Watch, *Benchers' Bulletin*, Winter 2014 (p.12)

Don't be taken advantage of by dishonest clients – ethical guidelines and rules, Practice Watch, Benchers' Bulletin, Summer 2011

Changes to cash transaction rule, Practice Watch, Benchers' Bulletin, Winter 2009

No cash rule — rent and real estate conveyances, Practice Watch, Benchers' Bulletin, October 2008

Receiving or accepting cash – is it worth it?, Practice Watch, Benchers' Bulletin, July 2008

Cautions on cash and new scams, Practice Watch, Benchers' Bulletin, May 2008

Know the rules for handling cash, Practice Watch, Benchers' Bulletin, October 2007

Lawyers not to accept $7,500 or more in cash trust deposits, Benchers' Bulletin, July-August 2005

Lawyers restricted from accepting $10,000 or more in cash, Benchers' Bulletin, April-May 2005

Benchers pass rule to fight money laundering, Benchers' Bulletin, May-June 2004

Receiving retainers and issuing a refund:

Cash retainer under $7,500 = trust cheque

Cash retainer of $7,500 or more with refund greater than $1,000 = cash refund

Cash retainer of $7,500 or more with refund of $1,000 or less = trust cheque

Practice watch

by Barbara Buchanan, Practice Advisor

CASH TRANSACTIONS AND RECORDS

AS PART OF its efforts to combat money laundering and terrorist financing, the Law Society limits the amount of cash that a lawyer can accept and requires lawyers to abide by the Law Society's client identification and verification rules. Lawyers who accept cash face additional recordkeeping requirements. Some changes to the recordkeeping requirements were made on October 31, 2014. No changes were made to the amount of cash that may be accepted. Lawyers should ensure that all staff who handle money understand the rules regarding cash transactions.

What additional record-keeping is required when a lawyer accepts cash?

Rule 3-61.1 sets out very detailed requirements. A lawyer who receives any amount of cash for a client that is not the lawyer's employer, must maintain a cash receipt book of duplicate receipts (the "receipt book") and make a receipt in the receipt book for any amount of cash received. The receipt book must be kept current. The lawyer must record the following for each receipt:

- the date on which the cash is received;
- the name of the person from whom the cash is received;
- the amount of cash received;
- the client for whom cash is received;
- the number of the file in respect of which the cash is received;
- *all dates on which the record was created or modified (new);*
- the signature of the person from whom the cash was received;
- the lawyer's signature (or an individual authorized by the lawyer to sign the receipt on the lawyer's behalf).



Is any special record-keeping required when a lawyer withdraws cash from a trust account?

Unless it is required under Rule 3-51.1(3.2) or (3.3), a lawyer must not make or authorize a cash withdrawal from a pooled or separate trust account (Rule 3-56(1.3)(d)). Rule 3-61.1(3) requires that, for each cash withdrawal, a lawyer must make a record of transaction signed by the person to whom the cash was paid and identifying:

- the date on which the cash was withdrawn;
- the amount of cash withdrawn;
- the name of the client in respect of whom the cash was withdrawn;
- the name of the person to whom the cash was paid;
- *all dates on which the record was created or modified (new).*

It is recommended that lawyers use the cash receipt book of duplicate receipts to record the information, including the signature of the person to whom the cash was paid.

How long must a lawyer keep cash transaction records?

Rule 3-68 provides that a lawyer must keep the cash receipt book of duplicate receipts and required cash withdrawal records ("cash transaction records") for as long as these records apply to money held in trust and for at least 10 years *from the final accounting transaction (new)*. Cash transaction records must be kept at the lawyer's chief place of practice in BC for as long as the records apply to money held in trust and, in any case, for at least three years.

The record retention requirement in Rule 3-68 applies to cash transaction records as well as to all the other records referred to in Rules 3-59 to 3-62 (e.g. accounting records, including supporting documents, trust account records, general account records, and billing records). However, as of October 31, 2014, records maintained in electronic form do not have to be kept at a lawyer's chief place of practice in BC as long as they are kept for the requisite period and in accordance with the Law Society Rules (see Rule 3-68(2) and new Rules 10-4 and 10-5).

How much cash may a lawyer accept?

Lawyers are generally prohibited from accepting an aggregate amount of $7,500 or more in cash with respect to any one client matter or transaction, except within the limited exceptions set out in Law Society Rule 3-51.1. A lawyer who accepts cash incrementally must make sure that, in total, it adds up to less than $7,500, unless acceptance of a greater amount is permitted by the rule (e.g. a retainer or payment of an account for professional fees and disbursements).

When does the prohibition against accepting an aggregate amount of $7,500 or more apply?

Rule 3-51.1 applies to a lawyer engaged in

any of the following activities on behalf of a client, including giving instructions on the client's behalf in respect of the activities:

- receiving or paying funds;
- purchasing or selling securities, real property or business assets or entities;
- transferring funds or securities by any means.

Can a lawyer refuse to accept cash?

Yes, a lawyer can make it a policy not to accept any amount of cash. To avoid issues, the policy could be included in the retainer agreement. Further, a lawyer should not accept cash if the lawyer knows or ought to know that it would assist in or encourage any dishonesty, crime or fraud (*Code of Professional Conduct for British Columbia*, rules 3.2-7 to 3.2-8). Lawyers should ensure that all staff who may handle cash understand the Law Society Rules and the firm's policy.

If there is money left over from a cash retainer when the lawyer's services end, should a lawyer issue a refund in cash or by trust cheque?

Whether a refund is issued by trust cheque or in cash would depend on the amount of the cash retainer and the amount of the refund:

- cash retainer of $7,500 or more with refund of greater than $1,000 = refund in cash;
- cash retainer of $7,500 or more with refund of $1,000 or less = refund by trust cheque;
- cash retainer under $7,500 = refund by trust cheque.

If the refund is in cash, do not write a trust cheque payable to "cash" or "bearer"; rather, make a cash withdrawal. The lawyer must make a record of the transaction, including the identifiers set out in Rule 3-61.1(3), signed by the person to whom the cash was paid.

Are there any other Law Society resources pertaining to cash transactions?

Yes, see the *Trust Accounting Handbook* and Know your obligations before accepting cash (Discipline Advisory, November 8, 2013). For accounting questions, contact the Trust Assurance department. For questions about ethics and conduct, contact a Practice Advisor in the Practice Advice department.

GUIDE TO DETECTING MONEY LAUNDERING

The International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe have collaborated to publish *A Lawyer's Guide to Detecting and Preventing Money Laundering*, available for download at no charge. This guide could be a resource for lawyers who want to further their understanding about how money laundering works. It discusses how lawyers may be vulnerable to criminals, alerts them to red flags, and provides case studies (e.g. trust structures, property purchases).

A lawyer must retain a record of the information and any documents obtained for the purposes of client identification and verification for the longer of (a) the duration of the lawyer and client relationship and for as long as is necessary for providing services to the client, and (b) a period of at least six years following completion of the work for which the lawyer was retained (Rule 3-100).

CLOSED FILE RECORDS – RETENTION, STORAGE AND DESTRUCTION

The practice resource article, Closed Files – Retention and Disposition, is being updated to take into account Law Society rule changes that were adopted on October 31, 2014:

- electronic data storage and processing (definitions of "metadata" and "record" and Rules 3-43.1, 3-59, 3.61.1, 3-62, 3-65 and 3-68);
- producing records in a complaint investigation (Rule 3-5.01);
- producing records in a forensic audit (Rule 4-43);
- storage providers and security (Rules 10-4 and 10-5).

Lawyers should particularly note the required retention periods for various accounting records, as well as the new requirements with respect to storage providers and security.

How long is a lawyer required to keep records?

Rule 3-68 requires a lawyer to keep the following records for as long as the records apply to money held in trust and for at least 10 years from the final accounting transaction:

- accounting records, including supporting documents (Rule 3-59);
- trust account records (Rule 3-60);
- general account records (Rule 3-61);
- records of cash transactions (Rule 3-61.1);
- billing records (Rule 3-62).

Unless they are electronic records, the above records must be kept at a lawyer's chief place of practice in BC for as long as the records apply to money held in trust and, in any case, for at least three years.

A lawyer must retain monthly trust reconciliations and the detailed listing supporting the reconciliations for at least 10 years (Rule 3-65).

A lawyer must retain a record of the information and any documents obtained for the purposes of client identification and verification for the longer of (a) the duration of the lawyer and client relationship and for as long as is necessary for providing services to the client, and (b) a period of at least six years following completion of the work for which the lawyer was retained (Rule 3-100).

Appendix B of the article Closed Files – Retention and Disposition includes a schedule of suggested minimum retention periods (not rules) for other records. These guidelines take into account statutory considerations, defending a negligence claim and responding to a complaint.

What are "records"?

A lawyer should consider what is meant by "records" in the context of the rules. For example, Rule 3-68 only applies to the records referred to in Rules 3-59 to 3-62. In contrast, the records referred to in Rules 10-4 and 10-5 are a broader category of records.

Section 29 of the *Interpretation Act* provides that, in an enactment, "record" includes books, documents, maps, drawings, photographs, letters, vouchers, papers and

Practice Watch ... from page 17

additional provisions with regard to clients who are organizations:

> **2.02**(8) A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under subrule (7):
>
> (a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;
>
> (b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and
>
> (c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with Rule 2.07.

RULE 3-51.1 – THE "NO CASH RULE"

A model rule on cash transactions was the Federation's first anti-money laundering initiative, intended to ensure that lawyers were not unwittingly involved in money laundering. It was also intended to avoid government intervention that could threaten solicitor-client privilege and confidentially or the independence of the legal profession. All 14 Canadian law societies adopted cash transaction rules based on the model rule.

The Law Society of BC was the first Canadian law society to adopt a limit on trust funds that lawyers could receive in cash. Rule 3-51.1 — the "no cash rule" — came into effect on May 7, 2004. At that time, the rule prohibited lawyers from receiving $10,000 or more in cash in the course of a single transaction, subject to certain exceptions. The rule was amended in June 2005 to reduce the threshold amount to $7,500, which brought BC into line with the model rule. Rule 3-61.1 requires lawyers to make a detailed record of cash transactions.

Lawyers are encouraged to ensure that they and their staff are familiar with the rules regarding cash and to establish office procedures, including what to do if a client unexpectedly shows up at the office with cash and how to make a refund. Rule 3-51.1 has been the subject of discipline decisions.

RULES 3-91 TO 3-102 – CLIENT IDENTIFICATION AND VERIFICATION

The Federation's second anti-money laundering initiative was the model rule on client identification and verification. These rules are now in force in all Canadian provinces and territories.

The Law Society of BC's client identification and verification rules (Rules 3-91 to 3-102) are designed to codify the steps that prudent lawyers must take in the normal course to identify and verify the identity of their clients. Lawyers are required to comply with the rules on all new matters commenced on or after December 31, 2008, regardless of whether the client is an existing or new client.

Wide definition of "client" and "financial transaction"

With few exceptions, lawyers must take reasonable steps to identify their clients (Rule 3-93). Lawyers are encouraged to pay close attention to all of the definitions in Rule 3-91. It's important to note that there is a wider definition of "client" in these rules than in common usage. Rule 3-91 provides that a "client" includes another party that the lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer. Further, in Rules 3-95 to 3-98, an individual who instructs a lawyer on behalf of a client in relation to a "financial transaction" is also included as a client.

A "financial transaction" means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money (Rule 3-91). It's important to understand that a financial transaction can take place without money being deposited to a trust account. If there is a financial transaction, and no exception applies, a lawyer must take reasonable steps to verify the client's identity, even if no money is deposited in trust.

"Identification" and "verification" are different

Identification and verification of identity are two distinct steps. "Identification" refers to the basic information that lawyers need to get from clients to establish their identity (Rule 3-93). This is simple and may be accomplished by telephone and email. "Verification" refers to the information that lawyers need to confirm that their clients are who they say they are (Rule 3-95). *This requires physically meeting with an individual to verify his or her identity.* Verification of identity is required, with few exceptions, when a "financial transaction" exists.

When a lawyer acts for a client that is an "organization," not only must the lawyer make reasonable efforts to obtain information about the organization, the lawyer also must obtain information about the individual instructing the lawyer on behalf of the organization. If there is a "financial transaction," the lawyer must take reasonable steps not only to verify the organization's identity, but to verify the individual instructing the lawyer on behalf of the organization.

Rule 3-97 applies when a lawyer provides legal services in respect of a financial transaction for a client who is an individual not physically present before the lawyer. If the lawyer cannot physically meet with the individual to verify his or her identity, another qualified person must physically meet with the individual to do so. If the client is in Canada, the lawyer must obtain an attestation from a commissioner of oaths for a jurisdiction in Canada, or a guarantor engaged in one of the permitted occupations in Canada listed in Rule 3-97(4). The lawyer's responsibilities may be fulfilled by other members of the lawyer's firm in any Canadian jurisdiction.

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Changes to cash transaction rule

ON NOVEMBER 13, 2009 the Benchers amended Rule 3-51.1, the cash transaction rule, to accomplish two things. First, to clarify that the refund-in-cash provision applies even if a cash retainer has been received incrementally. Second, to provide a procedure to follow if cash has been received by a lawyer in a situation beyond the lawyer's control that is not permitted by Rule 3-51.1.

If a lawyer has accepted an aggregate amount in cash of $7,500 or more in circumstances permitted under subrule (3.1), the lawyer must make any refund greater than $1,000 out of such money in cash. For more information on handling cash refunds and handling aggregate amounts on cash, see the May and July 2008 Practice Watch columns in the *Benchers' Bulletin*.

Lawyers are accountable for *accepting* cash beyond the permitted limit; however, the Benchers recognized that there are cases where a lawyer may *receive* cash in a circumstance beyond their control. For example, a client or other person could deliver a "personal and confidential" envelope containing cash to a lawyer's office without the lawyer's knowledge, or someone could make a cash deposit directly to a lawyer's bank account simply by having the account information. New subrule (3.3) sets out the procedure for a lawyer to follow in such circumstances.

For the full text of amended Rule 3-51.1, see the December 2009 *Member's Manual* amendment package, enclosed with this mailing.

SCHEMES AND SCAMS

On-line mortgage referral program

A BC lawyer received a telephone call from a person offering him the opportunity to participate in a new system to receive on-line mortgage referrals through a well known Canadian bank. The caller aggressively sought information from the lawyer about his practice. The lawyer was not a customer at that bank so thought it odd that he would receive this call. He contacted the Law Society about his suspicions. The bank informed the Law Society that it does not operate such an on-line referral service.

If you are contacted by a person purporting to represent a financial institution, check with the financial institution independently to find out if the person does represent the lender and that such an on-line mortgage referral system exists. We're not certain a scam was contemplated, but if so, it's probably safe to assume that the lawyer's trust account was the target.

Matrimonial debt collection

The Law Society has learned about a new twist to the phony debt collection scam. Although the specifics may change, a lawyer is contacted (usually by email) by a potential new client from a foreign jurisdiction to collect the balance of money owed by a former spouse in relation to settlement of a family law matter. The lawyer asks for information including court documents and says she will do a conflicts check. The lawyer then quickly receives a large cheque or bank draft in the name of the ex-spouse (either before or after issuing a demand for payment). The client contacts the lawyer again by email and says she understands that the lawyer received the money that she is owed and asks for her money. The financial instruments look real but are either well-made fakes or a cheque has been stolen and the signature forged. If someone is pressuring you to pay out funds quickly, be cautious.

Fraudulent investments

Be on the look-out for a new client (sometimes associated with an existing client), who asks you to provide little in the way of legal services but who wants to pay you to receive money from investors. Some people want to be associated with a lawyer to provide an appearance of legitimacy to their fraudulent schemes, often promising unrealistic returns on investment to people who are invited to place money in trust with a lawyer. Lawyers have a duty to be on guard against becoming a tool to assist these people (*Professional Conduct Handbook*, Chapter 4, Rule 6, footnote 3). While there are many legitimate investment opportunities that do not require a prospectus to be issued or regulatory registration or filings, be mindful that these tools are intended to safeguard investors.

If you are approached by a client to receive money from investors, ask yourself the following:

- Are you being asked to perform any actual legal services?
- How well do you know your client, and how did the client happen to come to you?
- Do you have the expertise to recognize an investment scam?
- Is the client registered as a dealer in the appropriate category under securities legislation? Are there plans to do so?
- Is there a prospectus, an offering memorandum or other disclosure document that explain the investment, its suitability for investors, its management and its risks? Are those documents available to potential investors?
- Are financial statements available? Have they been audited?
- If there is no prospectus, is it clear what exemptions are being relied upon?
- Will investors be separately represented by counsel?
- What will your involvement suggest to possible investors? Do you understand your professional obligations to them in this situation? Will you be able to properly discharge those obligations?
- What kind of security will be issued to the investors?
- What are the conditions on the investors getting their money back or re-selling?
- Do the investors pay a fee now or later?

For more tips to help you recognize and manage the risk of becoming the tool or dupe of an unscrupulous client, see Practice Watch (May, July, October and December 2008, and April, Summer and Fall 2009) in the *Benchers' Bulletin*; Notices to the Profession; and the Insurance/Risk Management section of the Society's

website. Useful information about investment scams, including affinity scams, is also available in Investment Scams: How to Protect Your Money, a new resource developed jointly by the BC and Alberta Securities Commissions (www.investright.org/protect_yourself.aspx).

Insurance risks with uncertified cheques

It has come to the Law Society's attention that some conveyancing lawyers are accepting purchase funds by way of uncertified cheques payable to the lawyer in trust, and then routinely and deliberately paying out from trust before the cheque clears. This is not prudent practice.

Law Society Rule 3-55 requires that a lawyer must at all times maintain sufficient funds on deposit in each pooled or separate trust account to meet the lawyer's obligations with respect to funds held in trust for clients.

Rule 3-56(1.2)(b) provides that no payment from trust funds may be made unless there are sufficient funds held to the credit of the client on whose behalf the funds are to be paid.

It is important to note that insurance will not assist a lawyer facing a trust fund shortfall in these circumstances.

BIG CHANGES TO MARKETING RULES

Chapter 14 (Marketing of Legal Services) of the *Professional Conduct Handbook* has been revised and reorganized to make the marketing rules more focused, easier to understand and less intrusive. Large parts of Chapter 14 were deleted altogether (e.g. the Short Form Services Description set out in Appendix 7), but some parts have been relocated elsewhere in the *Handbook* or, in two cases, in the Law Society Rules.

Overall, any "marketing activity" (a defined term now updated) undertaken or authorized by a lawyer must not be false, inaccurate, unverifiable, reasonably capable of misleading the recipient or intended recipient, or contrary to the best interests of the public (Rule 4). For example, a marketing activity violates Rule 4 if it is calculated or likely to take advantage of the vulnerability, either physical or emotional, of the recipient; is likely to create in the mind of the recipient or intended recipient an unjustified expectation about the results that the lawyer can achieve; or otherwise brings the administration of justice into disrepute (Rule 5).

A lawyer may state in any marketing activity a preference for practice in any one or more fields of law, if the lawyer regularly practises in each of those stated fields of law (Rule 16). The three-year, 20 per cent rule is gone.

Although Rule 18(a) still contains a prohibition against a lawyer's use of the term "specialist" or any similar designation suggesting a special status or accreditation in any marketing activity, note the Ethics Committee's opinion published on page 17 about permitted use of the terms "expert," "expertise" or "specializing." The article also addresses the use of testimonials in relation to the standards set out in Rule 4.

Lawyers are encouraged to read Chapter 14 in entirety regarding other changes.

DUTY TO MEET PROFESSIONAL FINANCIAL OBLIGATIONS

Some lawyers are signing contracts in which the lawyer and the lawyer's client are jointly and severally liable to a mediator for the mediator's account for mediation services. If the client does not pay the mediator's account, unless there is a *bona fide* legal dispute regarding payment, the lawyer may be personally liable to the mediator for the account. Also, apart from any legal liability, the lawyer has a professional duty to meet professional financial obligations incurred or assumed in the course of practice when called upon to do so (Chapter 2, Rule 2 of the *Professional Conduct Handbook*).

It is recommended that lawyers obtain retainers from their clients in advance of any mediation, and consider whether it is appropriate to enter into contracts in which they are jointly and severally liable with their clients.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch.❖



PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

More on client ID and verification and "no cash"



HOW ARE YOU making out with the client identification and verification and "no cash" rules? I have spoken to many groups about the rules, most recently the Chilliwack District Bar Association in May; however, in most cases I speak to individual lawyers on a one-on-one confidential basis. Please give me a call if you have questions and I will be happy to assist you.

Rule implementation systems

You may have already implemented systems that take the new rules into consideration or are in the process of doing so. Some tools and procedures to help you implement the rules in your practice may include:

- Provide information about the rules to new and existing clients in retainer letters, on your firm website, and in mail inserts with your accounts.
- Inform your staff about the "no-cash" rules and what to do if a client unexpectedly shows up at the office with cash.
- Modify your file opening procedures to include a requirement to comply with the rules.
- Modify your trust accounting procedures to require confirmation of rule compliance before paying money out of trust.
- Use a client identification and verification rule checklist.
- Appoint someone in your firm to ensure that you, other members of your firm and relevant support staff keep up to date with Law Society rule changes.
- Designate a firm privacy officer who is responsible for ensuring that you and your firm comply with privacy legislation.
- Consider whether you need to make any changes to your current policies and procedures to safeguard the confidentiality of client information.
- Plan ahead to determine who can act as your agent to obtain the information required to verify the identity of clients in jurisdictions outside of Canada.
- Record any exemption from identification or verification upon which you rely by placing a memo in the client file.
- Implement a system whereby you can easily retrieve previously collected identity and verification information about your client.
- Create a list of online resources that may assist you in quickly locating helpful information related to the rules. (For example, to obtain information about Financial Action Task Force member countries, click on www.fatf-gafi.org).

Frequently asked questions

The FAQs are but one of the resources on the Law Society website to assist lawyers and law firms understand and follow the new client identification and verification rules. See the website for more Q and As and watch for updates. Below are some questions and answers I have recently provided:

Q. Does a lawyer only have to verify a client's identity when money goes through his or her trust account?

A. You are required to verify a client's identity in circumstances where you do not use your trust account as well as in circumstances where you do use it. For example, a "financial transaction" may exist in circumstances where you give instructions on behalf of a client in respect of the receipt, payment or transfer of "money" without the "money" being deposited into your account. To determine your obligations, you must consider the meaning of the defined terms "financial transaction" and "money" in Rule 3-91(1).

Q. If I provide pro bono summary legal advice to a client that does not involve a "financial transaction," do I have to identify the client?

A. No. If you provide pro bono summary legal advice that does not involve a "financial transaction" (as defined in Rule 3-91(1)), you do not have to identify the client (Rule 3-92(2)).

Q. If I provide summary legal advice to a client that does not involve a "financial transaction" but I charge a fee for my services, do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide an exemption. You must make reasonable efforts to identify the client (Rule 3-93(1)).

Q. If I provide pro bono summary legal advice to a client that involves a "financial transaction," do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide

an exemption. Rule 3-93(1) requires you to make reasonable efforts to identify the client. You must also take reasonable steps to verify the client's identity unless there is an exemption that applies (Rules 3-94 and 3-95).

BC LAWYERS TARGETED IN NEW FRAUD SCHEME — INCORPORATION AND SMALL BUSINESS LOAN

Be on the look-out for a new counterfeit cheque and bank draft scam that originally surfaced in Ontario, a variation of which has now shown up in BC. This scam involves incorporating a new company or companies and, shortly after, acting in relation to a small business loan.

While the details may vary, the scam works something like this. A new client retains a lawyer to incorporate one or more companies. The client may present a driver's licence and other identification (all well-made fakes) and a working cellphone number. The residential and business addresses (fake) are the same.

A short time later, the client asks the lawyer to act with respect to a small business loan. The client shows the lawyer brochures and invoices related to equipment or inventory that he will purchase with the loan proceeds. The client wants the loan completed quickly, often just before a holiday when the lawyer may be rushed or short-staffed. He instructs the lawyer to send the proceeds to a third-party corporation, not the client's new company. The only security is a promissory note or a general security agreement.

The lawyer receives the loan proceeds in the form of a well-made fake certified cheque or bank draft. The lawyer deposits the fake instrument into the law firm's trust account. The lawyer writes a cheque or wires the funds to the third-party corporation, only later to find out that the certified cheque or bank draft was counterfeit.

For details on how to protect yourself, consult the Notice to the Profession issued May 14, 2009.

ABOUT TO ACT FOR YOURSELF? THINK TWICE!

I have recently received a flurry of calls with respect to lawyers acting for themselves. I discourage this for some of the same reasons that I discourage lawyers from acting for family members, e.g. a loss of objectivity, acting outside of one's area of expertise, and no insurance.

Keep in mind that the *Professional Conduct Handbook* rules apply to a lawyer acting on his or her own behalf and the lawyer must not engage in conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice. This may sound straightforward, but it becomes much more challenging if the lawyer has a personal interest in the matter at issue.

For example, a lawyer acting for him or herself may be tempted to communicate directly with the other party. If the other party is represented by counsel, the lawyer must not communicate with the other party regarding the matter, except through or with the consent of that party's lawyer. Likewise, what might be treated as a simple and perhaps inadvertent misstatement by a lay party in court might, when made by a self-representing lawyer, be seen as running afoul of that lawyer's ethical obligations to the court, and in the worst case might even attract disciplinary consequences.

For more information about the risks of acting for family and friends see the July 2005 *Insurance Issues: Risk Management*.

HEALTH CARE COSTS RECOVERY ACT IMPACTS PERSONAL INJURY CLAIMS

The Law Society issued a Notice to the Profession on April 14, 2009 about the *Health Care Costs Recovery Act*, SBC 2008, c.27 and *Health Care Costs Recovery Regulation* (BC Regulation 397/2008) that came into force on April 1, 2009.

Since then, I have received telephone calls from lawyers wanting more information. According to the provincial government's Third Party Liability web page, the Act "allows the Ministry of Health Services to recover all health care costs paid by government related to a beneficiary's injury that was caused by the wrongful act of a third party." There are obligations on plaintiffs, defendants and some insurers.

Be aware that the Act contains notice provisions that may affect settlements for personal injury or death, including those where a legal proceeding has not been filed or was filed prior to April 1, 2009. The notice requirements are in ss. 4, 5, 10, 12 and 13. Section 13(5) provides for a penalty for failing to give notice. Sections 4, 10, 12 and 13 require notice to be in a prescribed form. Links to PDF versions of the forms are on the government website. Section 24 sets out exclusions to the legislation (such as a wrongdoer's use and operation of a motor vehicle where ICBC insures the defendants and personal injury claims covered by the *Workers Compensation Act*).

Lawyers can read the *Health Care Costs Recovery Act* and associated regulations online at bclaws.ca. For further information or assistance, contact Barbara Carmichael, Legal Services Branch, Ministry of the Attorney General at 250-356-8817 or Barbara.carmichael@gov.bc.ca.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in *Practice Watch*.❖

Notice from the Provincial Court

THE *TSAWWASSEN FIRST Nation Final Agreement Act*, S.C. 2008, c. 32, and S.B.C. 2007, c. 39 came into force April 3, 2009. The *TFN Act* implements the "Final Agreement" reached between the Tsawwassen First Nation, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of British Columbia.

The Final Agreement vests in the Tsawwassen First Nation the jurisdiction to make laws regarding a number of subject areas described in the Final Agreement. One term of the Final Agreement is to provide that the Provincial Court of British Columbia is the forum within which prosecutions of particular offences under Tsawwassen Law will be heard.

See the court's website at provincialcourt.bc.ca for the complete text of the practice direction.❖

a banking instrument (e.g. certified cheque or bank draft), made out to your firm in trust. The instrument looks real and, assuming that it is, you deposit it into your trust account and transfer the funds to your "client." You later discover that the very authentic looking instrument was phony.

To best avoid the risk, contact your banker and ask him or her to contact the issuing bank to verify the instrument's authenticity and confirm to you when it is safe to pay out. **You cannot assume that the telephone numbers that appear on the payment instruments are legitimate**. Keep a record of the advice given.

Other scams

Over the past few years, the Law Society has described a number of identity scams, often in the real estate context. Typically these scams are attempted in situations where no realtor is involved. Another common scam is value fraud. Typically the fraudster agrees to purchase real property and flips it to a complicit purchaser at an artificially inflated price. This step positions the purchaser to deceive a mortgage lender as to the true value of the property when obtaining a loan. In Ontario, phony commercial loans transactions have surfaced and may make their way to BC.

If you think you have been contacted by a fraudster, please contact the Law Society's Practice Advice Department.

Sometimes the lawyer is waiting for a mortgage discharge before ordering a State of Title Certificate and that is the reason for the delay. However, the fact that you are waiting does not excuse you from your reporting obligations.

TITLE REPORTS — TYING UP LOOSE ENDS WITH LENDERS

When acting for a financial institution client in connection with the registration of a mortgage, you agree to provide a form of title report to the lender. Some lenders have complained to the Law Society that lawyers are not providing this information in a timely manner.

Sometimes the lawyer is waiting for a mortgage discharge before ordering a State of Title Certificate and that is the reason for the delay. However, the fact that you are waiting does not excuse you from your reporting obligations.



Communicate with your client about what is happening. Review the instructions that you typically receive from the lender and remind your staff to bring any warning letters to your attention.

According to Chapter 3, Rule 3 of the *Professional Conduct Handbook*, a lawyer must serve each client in a conscientious, diligent and efficient manner so as to provide a quality of service at least equal to that which would be expected of a competent lawyer in a similar situation. Rule 3 sets out a number of ways that a lawyer's service may be measured, e.g. keeping the client reasonably informed.

NO CASH RULE — RENT AND REAL ESTATE CONVEYANCES

A few cautions about the "no cash rule" (Rule 3-51.1) in relation to collecting rents and conveyances of real property:

Rent

If you are receiving monthly rent on behalf of a client from your client's tenant, note that you must not receive an aggregate amount in cash of $7,500 or more in respect of any one client matter or transaction. Accordingly, if you accept cash and deposit it in your trust account, you could quickly find yourself in violation of the no-cash rule. You may deposit into trust cash that in the aggregate amounts to less than $7,500 for the client matter. For example, if the tenant's monthly rent is $1,000 and you make monthly cash deposits, you would have deposited $8,000 in the aggregate by the eighth month. This is not permitted.

Real estate conveyances

Likewise, if you are acting for a client who is purchasing real property and the client wants to provide you with cash as part payment of the purchase price, you must not receive an aggregate amount in cash of $7,500 or more. For example, if your client wants to provide you with $25,000 in cash and the rest of the purchase money is to be paid by way of mortgage funds, you should not accept the $25,000 cash payment.

Make sure that your clients and your staff are aware that you cannot receive cash in amounts of $7,500 or greater. To be even safer, you could have a policy of not accepting cash at all.

POOLED TRUST ACCOUNTS

Receiving cancelled cheques and bank statements in electronic form

Rule 3-52 (1) (c) requires lawyers to periodically receive cancelled cheques and bank statements for their pooled trust account(s). These cancelled trust cheques and bank statements may be received or retained by lawyers in an acceptable electronic form (Rule 3-52 (1.1)).

Some financial institutions have advised lawyers that they will no longer provide them with their actual cancelled trust cheques. For example, a bank has advised its lawyer customers that it will provide them with paper copies of cheque images and electronic cheque images with their paper bank statements. The images will show both the front and back of each cheque. Is this acceptable?

The Law Society's Trust Assurance Department has determined the following acceptable electronic forms for cancelled trust cheques:

Acceptable electronic form for cancelled trust cheques

1. A CD-Rom of the cheque images, including the front and back of each cheque, provided by the bank to the lawyer on a monthly basis with the monthly bank statement.
2. Scanned paper copies of the cheques, including the front and back of each cheque, with the monthly bank statement.

continued on page 22

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor, Conduct & Ethics

Cautions on cash and new scams



CASH UNDER THE mattress, or in a safety deposit box? Think twice about whether you can deposit it in your trust account.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased's possessions and who wants you to deposit it into your trust account, be careful. You may deposit into trust cash that in the aggregate amounts to less than $7,500, but you may not deposit cash amounting to $7,500 or more (Rule 3-51.1). Be mindful of the words "in the aggregate" in subrule (3). Here's how it works.

If you are acting for a personal representative of an estate who discovers cash amongst the deceased's possessions and who wants you to deposit it into your trust account, be careful.

If your client finds $2,000 in the deceased's safety deposit box, you may deposit that amount in your trust account, following accounting rules for deposit of cash. If your client finds $5,500 in the cookie jar a few days later and wants you to deposit the $5,500 into trust, don't do it. In the aggregate, you would have received $7,500 in cash in a circumstance not permitted by the rule.

What can you advise the estate client who brings too much cash to your office? Here are two options:

- You can suggest that the client open up an estate account and deposit the cash into that account.
- You can suggest that the client use the cash to get a bank draft payable to your firm in trust.

HANDLING CASH REFUNDS

Lawyers may only receive or accept an amount of $7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-51.1. Where a lawyer has received a cash retainer in accordance with subrule (3.1), and the client is later entitled to a refund, there are rules governing when the refund must be made in cash rather than by cheque.

What happens if a lawyer receives an $8,500 cash retainer (permitted) but when the lawyer issues the final invoice, $3,000 is left in trust? How does the lawyer refund the $3,000 to the client? Subrule (3.1) requires that any refund greater than $1,000 out of the $8,500 retainer must be made in cash. The lawyer must refund $3,000 to the client in cash, not by trust cheque.

What if a lawyer receives a $7,000 cash retainer but when the lawyer issues the final invoice, $2,000 is remaining in trust? How does the lawyer return the $2,000 to the client? Because the lawyer received less than $7,500 from the client, subrule (3.1) does not apply and the lawyer is permitted to return the $2,000 to the client by way of a trust cheque.

Lawyers may only receive or accept an amount of $7,500 or more in cash in the very limited circumstances permitted by Law Society Rule 3-51.1.

What if the client provided a cash retainer in a foreign currency? Subrule (4) requires the lawyer to convert the foreign currency into Canadian dollars based on the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time. If no official conversion rate was published, the lawyer would use the conversion rate that the client would use in the normal course of business.

Breaches of the "no cash rule" are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.

Lawyers are being cited for breaches of Rule 3-51.1. Make certain that you and your firm understand the rule. Breaches of the "no cash rule" are treated seriously. This is an important matter to the Law Society, for the legal profession and for the protection of the public.

LIST OF VALUABLES FOR MONTHLY TRUST RECONCILIATION

If you have received "valuables" (defined in Rule 3-47) such as paintings, sculptures, gold, jewellery, securities, bonds (anything of value that can be negotiated or transferred) to hold for your client, be aware of the requirement to list the items received and delivered and any undelivered portion as part of your monthly trust reconciliation (Rule 3-65 (2)(e)). A sample *Valuable Property*

continued on page 22

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor, Conduct & Ethics

Know the rules for handling cash

NO CASH RULE IN RETAINER AGREEMENTS

LAWYERS MAY ONLY accept or receive cash in the limited circumstances permitted by Law Society Rule 3-51.1. All lawyers and individuals authorized to handle money should be aware of this rule, which prohibits lawyers from accepting more than $7,500 in cash except in limited circumstances. You may wish to make it your policy not to accept cash in order to reduce your chances of offending the rule.



In an effort to discourage clients from proffering cash, consider adding a paragraph similar to the following in your standard retainer agreement:

> Please note that we do not accept any funds in cash, including our retainer. As protecting your legal interest may require paying funds within certain time limits, we recommend that you discuss with us any necessary arrangements in advance to provide payment to us by way of certified cheque, money order, bank draft, electronic transfer or credit card.

If you educate your clients and those who work in your office about Rule 3-51.1, you are unlikely to find yourself in circumstances that offend the rule. For example, your legal assistant will know not to accept cash in relation to a purchase and sale transaction and your client will know not to offer cash in the first place.

You can find retainer agreement precedents in the Practice Support section of the Law Society's website.

CASH RECEIPT BOOK REQUIREMENT

Lawyers in private practice who accept cash in the limited circumstances permitted by Rule 3-51.1 must maintain a cash receipt book of duplicate receipts and make a receipt in the receipt book for any amount of cash received (Rule 3-61.1). All lawyers and individuals authorized by a lawyer to sign the receipt book on the lawyer's behalf should be aware of the receipt book requirements in Rule 3-61.1.

Both the lawyer who receives cash and the person from whom the cash is received must sign the duplicate receipt book. In addition to the two signatures, each receipt must identify:

- the date on which the cash was received;
- the person from whom the cash was received;
- the amount of cash received;
- the client who provided the cash; and
- the number of the file in respect of which cash was received.

WITHDRAWING CASH FROM TRUST

A lawyer who is required by Rule 3-51.1(3.1) to withdraw funds in cash from a pooled or separate trust account must make a record of the transaction and that record must be signed by the person to whom the cash is paid. The transaction record must also identify:

- the date on which the cash was withdrawn;
- the amount of cash withdrawn;
- the name of the client in respect of whom the cash was withdrawn;
- the number of the file in respect of which the cash was withdrawn; and
- the name of the person to whom the cash was paid.

For further information regarding Practice Watch, contact Barbara Buchanan, Practice Advisor, at 604-697-5816 or bbuchanan@lsbc.org. ❖

Services for members

Practice and ethics advisors

Practice management advice – Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact **Barbara Buchanan**, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Hand*book or matters for referral to the committee. Tel: 604 443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.

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Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families. Tel: 604-431-8200 or 1-800-663-9099.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers. Tel: 604 685-2171 or 1-888-685-2171.

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: Tel: 604 687-2344 Email: achopra1@novuscom.net.

Lawyers not to accept $7,500 or more in cash trust deposits

At their June meeting, the Benchers amended Law Society Rule 3-51.1 and related rules to stipulate that BC lawyers must not accept $7,500 or more in cash (down from the previous limit of $10,000 or more) in any one client matter or transaction.

Last year the Law Society of BC became the first law society in Canada to adopt a limit on trust funds that lawyers can receive in cash. This step demonstrated the legal profession's commitment to guard against lawyers' trust accounts being used in money laundering or fraudulent schemes.

It is critical for the legal profession across Canada to put in place strong anti-money laundering provisions. This is so because lawyers are the only professionals in the country who are exempt from the mandatory reporting to the federal government of large cash deposits and suspicious transactions.

The exemption has been in place since 2001, first by virtue of interim court injunctions to protect solicitor-client privilege, and then by agreement of the federal government pending final disposition of the issue in court. As noted in the President's View in the April-May *Benchers' Bulletin*, the Federation of Law Societies of Canada is continuing discussions with government to resolve the issue and come to a long-term solution. The trial respecting the applicability of the money laundering legislation to lawyers has been adjourned so that the Federation and the federal government can pursue settlement options.

Because of the importance of preventing money laundering activities, and the likelihood that money launderers see lawyers as a desirable target, law societies and lawyers across the country must be on guard.

The Federation of Law Societies proposed a model rule to limit cash receipts for consistency across the country. BC's provisions, as most recently revised, reflect the model rule.

BC lawyers are accordingly prohibited from accepting an aggregate amount of $7,500 Canadian or more in cash in one client matter or transaction, *other than* from a law enforcement agency; pursuant to a court order; from a financial institution or public body; to pay a fine or penalty; or (when acting as in-house counsel) on behalf of one's employer. A lawyer is also permitted to receive $7,500 or more in cash for professional fees, disbursements, expenses or bail.

If a lawyer receives a cash retainer and subsequently refunds all or part of it, any refund of $1,000 or more must also be in cash. The intent of this provision is to dissuade any person from purporting to provide a lawyer with a large cash retainer and later demanding it be refunded in the form of a trust cheque. A person might do this to obtain a negotiable instrument (the trust cheque) from a lawyer that would not trigger reporting requirements when that person deposits it in a financial institution.

The Law Society requires lawyers to record the source and form of all funds received (Rule 3-60) and to keep records of all cash receipts and of any cash withdrawals (Rule 3-61.1).

The revised rules can be found on the Law Society website and in the enclosed *Member's Manual* amendment package.✧

BC lawyers approve 2006 practice fee

In a referendum held June 22, BC lawyers voted (3,048:769) to set the 2006 practice fee at $1,065.50, as recommended by the Benchers. This represents approval of the fee by 79.9% of voters.

The 2006 practice fee includes four components: 1) a Law Society General Fund fee of $825, 2) a BC Courthouse Library Society fee of $160, 3) a Lawyers Assistance Program (LAP) fee of $53 and 4) an *Advocate* subscription of $27.50.

The practice fee does not include a CBA fee or fee equivalent. In the fee referendum last year, a majority of the profession approved a fee without a mandatory CBA fee component. The Benchers respected this decision of the profession that the CBA fee should be voluntary, not mandatory, and did not include it in the 2006 practice fee resolution.

The Benchers will set the 2006 Special Compensation Fund assessment and Lawyers Insurance Fund fee this fall. Beginning in 2003, the Benchers increased the Special Compensation Fund assessment to $600, because of increased claims and investigation costs relating to the practice of Martin Wirick.

While Special Compensation Fund claims costs have increased significantly, the Benchers have elected to finance these over a number of years, having regard both to the stability of the Fund and the interests of BC lawyers. Accordingly, no further Special Compensation Fund assessment increase is currently projected for 2006. The Lawyers Insurance Fund fee is expected to remain at $1,500 in 2006, for the sixth year in a row.✧



Reminder of anti-money-laundering rules

Lawyers restricted from accepting $10,000 or more in cash

Under Law Society Rule 3-51.1, which took effect May 7, 2004, BC lawyers are prohibited from accepting $10,000 or more in cash, other than:

- from a law enforcement agency;
- pursuant to a court order;
- in the lawyer's capacity as executor of a will or administrator of an estate; or
- as professional fees, disbursements, expenses or bail.

Lawyers are reminded that the rule defines a cash transaction as the receipt of $10,000 or more in cash in a single transaction or the receipt of two or more cash amounts in a 24-hour period that total $10,000 or more. Clients who wish to deposit $10,000 or more with a lawyer must convert the cash into negotiable instruments through a financial institution before depositing the money with a lawyer.

This limitation on cash transactions is the first of its kind in Canada. Following the lead of BC, however, law societies in Alberta, Saskatchewan, Ontario, Newfoundland and Labrador and the Northwest Territories have since passed similar rules, helping to ensure that Canadian lawyers are at the forefront of the fight against money laundering. The remaining law societies, along with Quebec's Chambre des Notaires, are expected to pass their own anti-money-laundering rules soon.

While the rules (and proposed rules) differ from province to province in certain details, they all prohibit lawyers from accepting cash over a prescribed amount from clients, except in certain permitted circumstances.

Rule 3-51.1 is part of the legal profession's response to the fight against money laundering in Canada.

While the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* require professionals who accept $10,000 or more in cash to report the transaction to the Financial Transactions and Reports Analysis Centre (FINTRAC), lawyers are currently exempt from *PC(ML)TFA* reporting requirements.

In 2001 BC and the Federation of Law Societies argued that *PC(ML)TFA* violated the constitution because it required lawyers to report privileged client matters to the government, contrary to the concept of an independent legal profession, and the BC Supreme Court ordered that lawyers be exempt from the reporting requirements of this legislation until the constitutional issue could be heard. The BC Court of Appeal upheld the decision, and the superior courts in several other provinces granted similar injunctions.

The federal government later agreed to be bound by the exemption in all Canadian jurisdictions until the court case is concluded.

The Law Society of BC, along with the other Canadian law societies, take the commitment to combat money laundering seriously. For that reason, the Society urges lawyers to familiarize themselves with Rule 3–51.1 and ensure they are in compliance. While very few lawyers would knowingly launder money on behalf of criminal or terrorist organizations, all lawyers should guard against money laundering or against serving as a dupe to facilitate fraudulent schemes.✧

Rule amendment

Discipline panels can hold penalty hearing after oral verdict

Law Society Rule 4-35 has been amended to allow a discipline hearing panel, if it has given oral reasons on its findings of fact and verdict, to proceed to the penalty stage of the hearing without first having to prepare written reasons.

Rule 4-35 previously required a panel to make a written report on facts and verdict under Rule 4-34(2) before it could consider penalty, even if it had already given an oral decision. This provision caused unnecessary delays in some hearings.

The text of Rule 4-35, as revised, is included in the *Member's Manual* amendment package in this mailing and available in the Publications & Forms section of the Law Society website at www.lawsociety.bc.ca.✧



Benchers pass rule to fight money laundering

As earlier reported, the Benchers have adopted a new financial rule to ensure that BC lawyers are at the forefront of the fight against money laundering. The new rule took effect on May 7, 2004.

Under Rule 3-51.1 (set out below), lawyers are prohibited from accepting $10,000 or more in cash, other than in circumstances in which the lawyer receives the funds from a law enforcement agency; pursuant to a court order; in the lawyer's capacity as executor of a will or administrator of an estate; or as professional fees, disbursements, expenses or bail.

Like the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* regulations, the new rule defines a cash transaction as the receipt of $10,000 or more in cash in a single transaction or the receipt of two or more cash amounts in a 24-hour period that total $10,000 or more. Clients who wish to deposit $10,000 or more in cash with a lawyer must convert the cash into negotiable instruments through a financial institution before depositing the money with a lawyer.

PC(ML)TFA regulations require all professionals who accept $10,000 or more in cash to report the transaction to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC). Lawyers are currently exempt from *PC(ML)TFA* reporting requirements after the Law Society of BC, along with the Federation of Law Societies of Canada, obtained an injunction from the BC Supreme Court in November, 2001. The law societies argued that the *PC(ML)TFA* violated the constitution because it required lawyers to report privileged client matters to the government, contrary to the concept of an independent legal profession. The BC Supreme Court ordered that lawyers be exempt from the reporting requirements of this legislation until the constitutional issue could be heard. The BC Court of Appeal upheld the decision, and the superior courts in several other provinces granted similar injunctions.

The federal government later agreed to be bound by the exemption in all Canadian jurisdictions until the court case is concluded. The trial is set for November, 2004. A number of law societies across the country are now considering rules similar to Rule 3-51.1.

While there are few cases of lawyers knowingly laundering money on behalf of criminal or terrorist organizations, the Law Society of BC recognizes that the legal profession must take steps to prevent money laundering or being led unwittingly into advancing criminal schemes. Rule 3-51.1, along with longstanding Law Society rules prohibiting lawyers from engaging in illegal activity, will ensure that BC lawyers effectively combat money laundering without the need for government intrusions into lawyer-client privilege and confidentiality.

Rule 3-51.1 reads:

Cash transactions

3-51.1 (1) This Rule applies to a lawyer when engaged in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:

(a) receiving or paying funds, other than those received or paid in respect of professional fees, disbursements, expenses or bail;

(b) purchasing or selling securities, real property or business assets or entities;

(c) transferring funds or securities by any means.

(2) This Rule does not apply to a lawyer when

(a) engaged in activities referred to in subrule (1) on behalf of his or her employer, or

(b) receiving or accepting currency

(i) from a peace officer, law enforcement agency or other agent of the Crown,

(ii) pursuant to a court order, or

(iii) in his or her capacity as executor of a will or administrator of an estate.

(3) While engaged in an activity referred to in subrule (1), a lawyer must not receive or accept an amount in currency of $10,000 or more in the course of a single transaction.

(4) For the purposes of this Rule,

(a) foreign currency is to be converted into Canadian dollars based on

(i) the official conversion rate of the Bank of Canada for that currency as published in the Bank of Canada's Daily Memorandum of Exchange Rates in effect at the relevant time, or

(ii) if no official conversion rate is published as set out in paragraph (a), the conversion rate that the client would use for that currency in the normal course of business at the relevant time, and

(b) two or more transactions made within 24 consecutive hours constitute a single transaction if the lawyer knows or ought to know that the transactions are conducted by, or on behalf of, the same client.

As amended, Rule 3-47 defines "currency" to include "current coins, government or bank notes of Canada or any other country."

This Rule is included in the enclosed *Member's Manual* amendment package.✧

CLIENT IDENTIFICATION AND VERIFICATION CHECKLIST

Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. The rules are a key part of the Society's efforts to combat money laundering and terrorist financing. Failure to comply with the rules can have significant disciplinary, insurance, and financial consequences. Trust shortage liability insurance coverage for reliance on fraudulent certified cheques (Part C of the compulsory policy) is contingent upon compliance with the client identification and verification rules. See "Trust Shortage Liability Insurance for Reliance on Fraudulent Certified Cheques or Misrepresentations (Part C)" on the Law Society website at www.lawsociety.bc.ca.

Identification and verification are separate but related concepts. The client *identification* rules require that lawyers make reasonable efforts to obtain basic identification information about clients. Additionally, client *verification* rules apply when a lawyer receives, pays, or transfers money on behalf of a client, or gives instructions on behalf of a client in respect of the receipt, payment, or transfer of money (a "**financial transaction**"). Verification may be required in situations that do not involve the use of a lawyer's trust account. **Lawyers must physically meet clients to verify identity unless exempted under the rules.**

The rules specify timing for identification and verification procedures (Rules 3-105 and 3-106), procedures for clients who are individuals not physically present before the lawyer (Rule 3-104), information and documents to be recorded or copied (Rules 3-100 and 3-102), and retention periods (Rule 3-107). The rules also require lawyers to withdraw if, while retained or when obtaining client identification and verification information, they know or ought to know that they would be assisting in fraud or other illegal conduct (Rule 3-109).

This checklist may be used to record information required under the rules; however, refer to the rules themselves when determining the information necessary to identify clients and verify their identity. In particular, note that "**client**", "**financial institution**", "**financial transaction**", "**interjurisdictional lawyer**", "**money**", "**organization**", "**public authority**", "**reporting issuer**", and "**securities dealer**" are defined. Pay close attention to all of the definitions in Rule 3-98, as they may not be consistent with common usage (e.g., **client** is widely defined), and identification and verification requirements vary according to the type of transaction and entity. (Defined words and phrases appear in boldface type in this checklist.)

Further information on the application of the rules, including FAQs, an online course, and a Discipline Advisory, is available at www.lawsociety.bc.ca (see, under "Support and Resources for Lawyers", "Practice Advice", "Practice Advisors – Frequently Asked Questions").

Currency of checklist and new developments. This checklist is current to September 1, 2018. The Federation of Law Societies has proposed amendments to its Model Rule on Client Identification and Verification Requirements. If the Federation's Council approves the amendments, they will be forwarded to the law societies for adoption. Changes to the Law Society of BC's rules would require the Benchers' approval and, if approved, may affect this checklist.

Contact Barbara Buchanan, QC, Practice Advisor, Conduct and Ethics, at 604.697.5816 or bbuchanan@lsbc.org with questions.

GENERAL EXEMPTIONS

Are you being retained by this client to provide **legal services**?

- ❑ No – identification and verification not required (Rule 3-99)

Were you retained in respect of this specific matter before December 31, 2008?

- ❑ Yes – identification and verification not required (Rule 3-108)

Are you in-house counsel providing legal services on behalf of your employer?

- ❑ Yes – identification and verification not required (Rule 3-99)

Will you provide legal services that do not involve a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**) as part of a duty counsel program sponsored by a non-profit organization?

- ❑ Yes – identification and verification not required (Rule 3-99)

Will you provide legal services in the form of pro bono summary advice that does not involve a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**)?

- ❑ Yes – identification and verification not required (Rule 3-99)

Has this **client** already been identified, and the identity verified and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has engaged you to act as an agent to provide legal services to the **client**?

- ❑ Yes – identification and verification not required (Rule 3-99)

  Date confirmed: _____

- ❑ Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

Has this **client** already been identified, and the identity verified and documentation retained, by another B.C. lawyer or **interjurisdictional lawyer** who has referred the **client** to you for the provision of legal services?

- ❑ Yes – identification and verification not required (Rule 3-99)

  Date confirmed: _____

- ❑ Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

Has this **client** already been identified, and the identity verified and documentation retained, by another member or employee of your firm who is subject to these rules or similar requirements in another Canadian jurisdiction?

- ❑ Yes – identification and verification not required (Rule 3-99)

  Date confirmed: _____

- ❑ Copy/copies attached (You are not required to obtain copies, but it would be prudent to do so. Any copied material must be retained: Rule 3-107.)

IDENTIFICATION

Identification Exemption

Have you previously identified (and retained a record) for this **client**, including instructing individuals if the **client** is an **organization**? (Note that if the instructing individual of an **organization** changes, you must identify the new individual.)

❑ Yes – identification not required (Rule 3-100)

Date identified: _____

If the exemptions above do not apply, you must make reasonable efforts to obtain the applicable identification information (Rule 3-100). If you do obtain the information, you must also record it. You are not required to copy documents from which the information is obtained. However, it may be prudent to do so depending on the circumstances and you must retain any copies made (Rule 3-107).

Lawyers have a professional responsibility to safeguard the confidentiality of client information (*BC Code*, s. 3.3, and Law Society Rule 10-4). Lawyers should also be aware of their legal responsibilities under the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

Note: for identification purposes, "**client**" includes another party that your **client** represents, or on whose behalf your **client** otherwise acts when obtaining legal services from you (Rule 3-98). You must also make reasonable efforts to obtain the applicable identification information for these individuals or **organizations** unless the above exemptions apply.

❑ **Client** is an individual:

- Full name _____
- Business address _____
- Business telephone _____
- Home address _____
- Home telephone _____
- Occupation(s) _____

Date identified: _____

❑ **Client** is a **financial institution**, **public authority**, or **reporting issuer**:

- Full name _____
- Business address _____
- Business telephone _____
- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

_____

_____

_____

Date identified: _____

☐ **Client** is another type of **organization** (e.g., trust, partnership, association, private company):

- Full name _____
- Business address _____
- Business telephone _____
- Incorporation number or BIN, and place of issue of number _____
- General nature of business or activity _____
- Name, position, and business contact information for individuals who give instructions with respect to the matter for which the lawyer is retained

_____

_____

_____

Date identified: _____

VERIFICATION

Verification Exemptions

Will you provide legal services in respect of a **financial transaction** (generally, the receipt, payment, or transfer of **money** on behalf of the **client**)?

- ❑ No – verification not required (Rules 3-99 and 3-102)

Have you previously verified (and retained documentation of) the identity of this **client**, and the identity of instructing individuals if the **client** is an **organization**? In the case of individuals, do you recognize the individual whose identity you previously verified? (Note that if the instructing individual of an **organization** changes, you must verify the identity of the new individual.)

- ❑ Yes – verification not required (Rules 3-105 and 3-106)

Date: _____

If you provide legal services with respect to a **financial transaction**:

Is the client:

- ❑ A **financial institution**, **public authority**, or **reporting issuer**?
- ❑ An individual instructing you on behalf of a **financial institution**, **public authority**, or **reporting issuer**?

- ❑ If yes to any of the above – verification not required (Rule 3-101)

Date: _____

Will the **money** be:

- ❑ Paid to or received from a **financial institution**, **public authority**, or **reporting issuer,** acting as a principal?
- ❑ Received from the trust account of another B.C. lawyer or **interjurisdictional lawyer**?
- ❑ Received from a peace officer, law enforcement agency, or other public official acting in an official capacity?
- ❑ Paid or received pursuant to the order of a court or other tribunal?
- ❑ Paid or received to pay a fine or penalty?
- ❑ Paid or received as a settlement of a legal or administrative proceeding that has been commenced?
- ❑ Paid or received for professional fees, disbursement, expenses, or bail?

- ❑ If yes to any of the above – verification not required (Rule 3-101)

Date: _____

If all funds involved are being transferred by electronic transmission, and the sending and receiving account holders do not handle or transfer the funds:

- ❑ Is the transfer occurring between **financial institutions** or financial entities headquartered and operating in countries that are members of the Financial Action Task Force?
- ❑ Does the transmission record contain a reference number, date, transfer amount, type of currency, names of sending and receiving account holders, and names of sending and receiving entities?

❑ If yes to both of the above – verification not required (Rule 3-101)

Date: _____

If the exemptions above do not apply, you must identify the **client** and also take reasonable steps to verify the identity of the **client**. Use and retain copies of what you reasonably consider to be reliable, independent source documents, data, or information (Rules 3-102 and 3-107).

While lawyers have a general responsibility to safeguard the confidentiality of client information, lawyers should also be aware of their legal responsibilities under the *Personal Information Protection Act*, S.B.C. 2003, c. 63.

Note: for verification purposes, "**client**" includes another party that your **client** represents or on whose behalf your **client** otherwise acts when obtaining legal services from you, and also an individual instructing you on behalf of a **client** in relation to a **financial transaction** (Rule 3-98). You must also take reasonable steps to verify the identity of these individuals or **organizations** unless the above exemptions apply. (You will have recorded business contact information when identifying an instructing individual (Rule 3-100)). To verify the identity of an instructing individual, you must also obtain and record the individual's home address, home telephone number, and occupation (Rules 3-98 and 3-100).

❑ **Client** is an individual (or instructing individual in relation to the **financial transaction**)

Valid, original, government-issued identification such as:

- ❑ Driver's licence
- ❑ Birth certificate
- ❑ Health insurance card
- ❑ Passport
- ❑ Other, similar record _____

Date verified: _____

(must be at time legal services are provided in respect of the financial transaction: Rule 3-105)

❑ Copy/copies attached

❑ **Client** is an **organization**

❑ Client created or registered pursuant to legislative authority (e.g., company, society, limited partnership, LLP): certificate of corporate status, copy of annual filings required under applicable legislation, or similar written confirmation of existence from government registry or **public authority** (including **organization**'s address, and names of directors, where applicable)

Date verified: _____

(must be within 60 days of engaging in a **financial transaction**: Rule 3-106)

❑ Copy/copies attached

OR

❑ Client not registered in government registry (e.g., trust, partnership): copy of constating documents: trust or partnership agreement, articles of association, or similar record confirming existence of **organization** not registered in a government registry

Date verified: _____

(must be within 60 days of engaging in a **financial transaction**: Rule 3-106)

❑ Copy/copies attached

AND

❑ If **organization** is not a **securities dealer**, take reasonable steps to obtain and record names and occupations of all directors **(**Rule 3-103)

_____

_____

Date obtained: _____

AND

❑ Take reasonable steps to obtain and record the name, address, and occupation of all persons with 25% or more ownership of, or shares in, the **organization (**Rule 3-103)

_____

_____

Date obtained: _____

☐ **Client** is an individual **not** physically present before the lawyer (Rule 3-104)

Note: for verification purposes, "**client**" includes another party that your **client** represents or on whose behalf your **client** otherwise acts when obtaining legal services from you, and also an individual instructing you on behalf of a **client** in relation to a **financial transaction** (Rule 3-98). You must also verify the identity of these individuals or **organizations**.

☐ Is **client** in Canada? Name of individual:_____

(Note that if your firm conducts business in another Canadian jurisdiction, the identity of this **client** may be verified, and documentation retained, by another member or employee of your firm in that jurisdiction (Rule 3-99). If so, you do not need to comply with the following procedures.)

Obtain attestation from:

- ☐ commissioner of oaths for a Canadian jurisdiction, or
- ☐ guarantor in Canada (dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant, professional engineer, veterinarian, architect, peace officer, Ontario paralegal licensee, registered nurse, or school principal)

The commissioner or guarantor must:

- ☐ examine the **client's** valid, original, government-issued identification (such as driver's licence, birth certificate, health insurance card, passport, or similar record)
- ☐ include, on a legible photocopy of the identification document:
  - the examiner's name, occupation, and address
  - the examiner's signature
  - the type and number of the identification document

Date verified / attested: _____

(must be at time legal services are provided in respect of a **financial transaction**: Rule 3-105)

☐ Document(s) attached

(A Sample Attestation Form is attached as an Appendix to this checklist.)

☐ Is **client** outside Canada? Name of individual:_____

☐ Obtain attestation from an agent who has reviewed documents to verify **client's** identity. The form of attestation can be similar to that required for verifying the identify of **clients** who are in Canada but not present before the lawyer

☐ Verification and attestation must be made under an agreement or arrangement in writing for verification between lawyer and agent

Date verified / attested: _____

(must be at time legal services are provided in respect of a **financial transaction**: Rule 3-105)

☐ Document(s) attached

(A Sample Attestation Form and a Sample Agreement with Agent are attached as Appendices to this checklist.)

APPENDIX I: SAMPLE ATTESTATION FORM FOR VERIFICATION OF IDENTITY

(Client in Canada)

The following form may be used when the lawyer is required by Law Society of British Columbia Rule 3-104 to verify the identity of a client who is in Canada but not physically present before the lawyer. It may be modified to suit the circumstances of the matter or transaction.

The person attesting must be a commissioner of oaths, or a guarantor who is a dentist, medical doctor, chiropractor, judge, magistrate, lawyer, notary (in Quebec), notary public, optometrist, pharmacist, professional accountant, professional engineer, veterinarian, architect, peace officer, Ontario paralegal licensee, registered nurse, or school principal. The commissioner or guarantor must physically meet with the client and:

- examine the client's valid, original, government-issued identification (such as driver's licence, birth certificate, health insurance card, passport, or similar record),
- attest, on a legible photocopy of the identification document, that they have seen the identification document, and
- place, on the photocopy of the identification document:
    - their name, occupation, and address;
    - their signature; and
    - the type and number of the identification document.

[THE FOLLOWING MUST BE PLACED ON THE PHOTOCOPY
OF THE IDENTIFICATION DOCUMENT]

I attest that:

1. I am a [*commissioner of oaths*] [*guarantor's occupation from type specified above*] in the province/territory of [*province/territory*] with a place of business at [*business address and telephone number*];

2. I met with [*name of client of the lawyer*] on the [*specify*] day of [*month*], [*20__ *] and examined his/her original [*type of government-issued identification document*], issued by [*name of government authority*] on [*date of issue*] and bearing document number [*number*];

3. To the best of my knowledge and belief, the document is valid and unexpired and the information on it is current, correct, and complete; and

4. This copy is a true copy of the document, the original of which I examined.

Signed by me on the [*specify*] day of [*month*], [*20__ *] at [*place and province/territory*].

_____

Signature of commissioner of oaths or guarantor

APPENDIX II: SAMPLE AGREEMENT WITH AGENT FOR VERIFICATION OF CLIENT IDENTITY

(Client outside Canada)

The following agreement may be used when the lawyer is required, by Law Society of British Columbia Rule 3-104, to engage an agent outside Canada to verify the identity of a client who is not in Canada. It may be modified to suit the circumstances of the matter or transaction.

BETWEEN:

[*Name of the lawyer and business address*]

the "Lawyer"

AND:

[*Name of agent and business address*]

the "Agent"

RE:

[*Name of client of the Lawyer*]

the "Client"

WHEREAS:

The Lawyer has been retained by the Client to provide legal services in Canada;

The Lawyer is required to verify the identity of the Client; and

The Agent has agreed to examine an identification document or documents for the purpose of verifying the Client's identity on behalf of the Lawyer;

FOR VALUABLE CONSIDERATION (the receipt and sufficiency of which is acknowledged), the parties agree that:

1. The Agent will meet, in person, with the Client and examine the Client's valid, original, government-issued identification documents such as a driver's licence, birth certificate, health insurance card, passport, or similar record (the "Documents");

2. The Agent will make legible photocopies of all Documents examined;

3. The Agent will attest, on each photocopy and in a form similar to that attached as an Appendix to this agreement, that the Agent has examined the Documents;

4. The Agent will provide each original signed attestation, on which the Agent has placed the information required under paragraph 3 above, to the Lawyer no later than [*date*];

5. This agreement may be signed in counterparts, and will be read with any changes of gender and number as may be required by context; and

6. This agreement will be governed and interpreted according to the laws of the Province of British Columbia and the laws of Canada, as applicable.

Dated this [*specify*] day of [*month*], [*20__*] at [*place and country*].

[*name of law firm*]

[*name of the Lawyer*]

_____

Signature of the Lawyer

[*name of the Agent's firm or business, if applicable*]

[*name of the Agent*]

_____

Signature of the Agent

Appendix to Agent Agreement: Sample Attestation Form for Use Outside Canada

[THE FOLLOWING MUST BE PLACED ON THE PHOTOCOPY OF THE IDENTIFICATION DOCUMENT]

I attest that:

1. I am a [*agent status or occupation*] in [*location*] with a place of business at [*business address and telephone number*];

2. I met with [*name of client of the lawyer*] on the [*specify*] day of [*month*], [*20__*] and examined his/her original [*type of government-issued identification document*], issued by [*name of government authority*] on [*date of issue*] and bearing document number [*number*];

3. To the best of my knowledge and belief, the document is valid and unexpired and the information on it is current, correct, and complete; and

4. This copy is a true copy of the document, the original of which I examined.

Signed by me on the [*specify*] day of [*month*], [*20__*] at [*place*].

_____

Signature of the Agent

Client ID & Verification

Client identification and verification rules

Law Society Rules 3-98 to 3-109 require lawyers to follow client identification and verification procedures when retained by a client to provide legal services. A Client Identification and Verification Procedure Checklist is published on the Law Society website as part of the *Practice Checklist Manual*. You can use the checklist to help you apply the rules.

Read the rules carefully and pay close attention to the definitions in Rule 3-98. Terms such as "client", "money", "financial transaction", interjurisdictional lawyer", "organization", "public authority" and "reporting issuer" may not be consistent with common usage. For example, "client" includes another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer. When a lawyer is acting for an organization, a lawyer has responsibilities to obtain information about the person instructing the lawyer on behalf of the organization. "Money" includes securities and negotiable instruments or other financial instruments as well as cash or currency.

Identification and verification are two distinct concepts in the rules. Identifying your client is easy; verifying your client's identity requires more effort because a financial transaction is involved. Many exemptions to the rules exist. Understanding the difference between identification and verification and knowing the exemptions will save you time and work.

Lawyers must keep a record of the information and documents obtained to identify and verify a client's identity. Lawyers must also retain a copy of every document used to verify the identity of any individual client or organizational client (including the instructing individual) when providing legal services in respect of a financial transaction.

Frequently asked questions

The series of questions and answers below are meant to assist in explaining the client identification and verification requirements. More information may be added at a future date.

Identification versus verification

Resources

Law Society Rules, Part 3, Division 11 (Rules 3-98 to 3-109)

Client Identification and Verification Checklist

Client Identification and Verification Online Course, Part 3 of the Courthouse Libraries BC series, The Practical Lawyer – Practice Advisor Barbara Buchanan, QC guides participants through the general client identification and verification requirements and how to obtain more detailed information and assistance. This program also deals with some aspects of fraud prevention. *[new in 2016]*

Discipline Advisory, Client ID and verification (*February 8, 2018*)

1. The Rules talk about identification and about verification. What's the difference between them?

Identification

2. In what circumstances am I required to identify my client?

---

3. I was acting for a client on a matter before December 31, 2008, and the matter is continuing. Do I have to identify this client?

---

4. What are my obligations in determining whether a lawyer for whom I am acting as agent or a lawyer who has referred a client to me has taken the necessary steps to identify that client?

---

5. I have been retained by a law firm to provide a legal opinion on an issue arising in a matter for which they are acting for a client. Do I have to identify or verify the identity of the law firm's client?

---

6. What information do I have to obtain to identify my client when my client is an individual?

---

7. Can I act for an individual who doesn't have an occupation or doesn't want to tell me what it is?

---

8. What if my client is living on the street and doesn't have a home address? How do I record the client's address?

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9. My client is acting on behalf of a minor. Do I have to identify the minor?

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10. What information do I have to obtain to identify a client that is an organization?

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11. What information do I have to obtain to identify a client that is a "financial institution", a "public authority" or a "reporting issuer"?

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12. If my client represents or acts on behalf of another party, do I have to obtain information to identify the other party in addition to obtaining information to identify my own client?

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13. Do I have an obligation to ask my client if they act for or represent another party who is directing or instructing them?

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14. I am acting for a union on a grievance. Am I required to identify the grievor and the union?

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15. Lawyers retain me to provide mediation services to their clients. I do not give legal advice; I merely act as a neutral mediator. I do not prepare documents for use in a proceeding; however, when there is a settlement, I often prepare minutes of settlement. The lawyers and their clients sign a mediation agreement with me. I bill the lawyers for my work as a mediator. Am I required to identify the lawyers? Am I required to identify their clients?

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16. I am retained by lawyers to arbitrate disputes. At the end of the arbitration, I provide a written decision. I bill the lawyers for my work. Am I required to identify the lawyers? Am I also required to identify the lawyers' clients as third party beneficiaries or principals?

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17. I sometimes commission or notarize a document for someone but do not give any legal advice. I usually charge for this service. Do I have to identify the person?

Verification

18. Rule 3-103 talks about identifying directors, shareholders and owners. What is required?

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19. What are "reasonable efforts" to obtain information to identify directors, shareholders and owners?

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20. After I have verified the identity of my corporate client, do I have to do something else with every change of directors? For example, Rule 3-102 (2)(b) tells us what we must do but how does it relate to Rule 3-103? Over time there will be changes to the directors and to owners of 25% or more of the shares.

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21. If I am not able to get the names of the directors, shareholders and owners of a corporation or society, may I continue to act for the client?

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22. Do I have to verify my client's identity when I receive money for my legal fees and disbursements?

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23. Does every "financial transaction" trigger the verification requirements?

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24. Are there any exemptions to the requirement to verify a client's identity when there is a financial transaction?

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25. My client is the executrix of an estate. I know that I have to verify her identity but do I also have to verify the identity of the beneficiaries because they will receive money pursuant to the will?

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26. I did the legal work to incorporate a company and I am now acting for the company on another matter. May I rely on documents already in my possession to verify the company's identity or must I rely on documents from a government registry?

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27. I am acting for the vendor in a real estate transaction. The purchaser's lawyer will send me his/her trust cheque for the sale proceeds. After paying the outstanding mortgage and taking my fees and disbursements, I will send my client my trust cheque for the balance. Do I have to verify my client's identity?

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28. My client is a private company that is raising money from the sale of shares. The company receives subscription proceeds in trust from subscribers pending closing of the share offering. The subscriber (not my client) sent me the purchase price for the shares in trust. Do I have to verify the identity of the subscriber as well as verify the identity of my client?

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29. My client has asked me for some legal advice in connection with some investments. Do I have to verify my client's identity?

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30. I have been retained by an insurance company to act for it in relation to a subrogated litigation claim. Assume there is a financial transaction and that the plaintiff client's claim is settled without commencing a proceeding. Do I have to verify the identity of the insurance company's client considering the definition of "client" in Rule 3-98?

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31. I have been retained by an insurance company to defend a liability claim. What are my obligations, when defending an insured on the instructions of an insurer pursuant to a liability policy?

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32. My client will receive (or pay) money to settle a legal proceeding. Will I have to verify the client's identity in that case?

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33. Do I have to verify the identity of my client when I receive money for my client from the trust account of another lawyer or interjurisdictional lawyer?

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34. How do I verify the identity of my client when my client is an individual?

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35. How do I verify the identity of a corporation or a society?

Unless another exemption applies, you must take reasonable steps to verify the client's identity by obtaining and retaining copies of what you reasonably consider to be reliable, independent source documents, data or information.

If the "client" (as defined in Rule 3-98) is an organization such as a corporation or society created pursuant to legislative authority, you must obtain and retain a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors and officers, such as:

(a) a certificate of corporate status issued by a public authority;

(b) a copy obtained from a public authority of a record that the organization is required to file annually under applicable legislation; or

(c) a copy of a similar record obtained from a public authority that confirms the organization's existence.

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36. I am acting on a joint venture. How do I verify identity?

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37. How do I verify the identity of a client that is a partnership?

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38. I am acting for a trust. What kind of documents might I obtain to verify its identity?

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39. My client is a Canadian lawyer. There is a financial transaction. I am not meeting with the lawyer in person. Do I have to verify the lawyer's identity?

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40. I am a lawyer in Vancouver and my client is in Calgary. Are there any special rules to verify this person's identity?

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41. Who in Canada can provide an attestation to an individual's identity?

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42. How would a commissioner of oaths or a guarantor attest to an individual's identity in Canada?

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43. When would I use an agent to verify the identity of a client outside of Canada?

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44. May I rely on a faxed attestation?

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45. I have acted for a client before and have already verified the client's identity. Do I have to do it again?

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46. I have acted for a corporate client on a number of matters and have complied with the identity verification requirements. Someone new is now instructing me on behalf of the client. Do I have to verify that person's identity?

47. Although there is one senior person instructing me with respect to a financial transaction on behalf of my corporate client, I am also receiving instructions on discrete aspects of the matter from several other company employees. Do I have to verify the identity of every individual?

48. Do I have an obligation to look behind the assertion that an individual is authorized to instruct me on behalf of an organization?

49. Do I have to identify my client or verify my client's identity before acting for the client?

50. What happens if I am unable to verify the identity of a corporate client within 60 days of engaging in a financial transaction?

51. Do I have to document the steps I take to verify my client's identity?

52. Do I have to verify the identity of a client for whom I was retained before December 31, 2008?

53. Do I have to verify the identity of an attorney who is instructing me on behalf of the donor under a power of attorney?

54. If I am acting on a class action, do I only need to verify the identity of the representative plaintiff?

Practice advice

by Barbara Buchanan, QC, Practice Advisor

MOVING FIRMS OR RETIRING

LAWYERS TRANSFERRING TO another firm, moving to an in-house position or terminating a practice often ask questions about the requirements under the *BC Code* and Law Society Rules. They often call with one specific question. Once we start talking, other considerations arise. The frequency of these questions led to two key resources: Ethical considerations when a lawyer leaves a firm (Summer 2017 *Benchers' Bulletin*, pages 15 to 18) and Winding Up A Practice: A Checklist, June 2017.

These resources assist lawyers in considering the many tasks and decisions to be made related to open files, closed files, undertakings, liens, wills, wills notices, fiduciary property, valuables, Registrar of Companies notices, records storage, trust accounts, trust funds, memberships, subscriptions, suppliers, insurance, Law Society requirements, law corporations, staff, office premises, furniture, equipment, libraries, public utilities, websites, domain names, email addresses and liabilities.

RECENT SCAM ATTEMPTS AGAINST BC LAWYERS

Some recent scam attempts against BC lawyers are described below. For other scams and more detailed information, including the ubiquitous "bad cheque scam," see "Scams against lawyers persist – What are they and what can you do about them?" in the Summer 2018 *Benchers' Bulletin*, pages 9 and 10.

iTunes gift card scam

Scammers have emailed BC law firm staff and made it appear that the sender is a lawyer at the firm. The scammers may have accessed and used a lawyer's email account or they may have used a very similar email address with, for example, one letter different from the lawyer's actual email address. Sometimes scammers find out when a lawyer is away from the office and use that information in the ruse. The scammer directs the law firm employee to purchase iTunes gift cards for a client. The scammer wants the employee to send a picture of the gift card to the scammer. The picture would include the codes so the scammer could either purchase goods or sell the codes.

Consider implementing a policy of refusing to accept instructions by email regarding purchases and the movement of funds. Double-check email addresses. Require instructions to be provided in person or, at a minimum, by telephone from a number previously provided and independently verified. Ensure your computer system is secure.

For cybercrime risk management, see Ten simple steps you can take to protect your systems and your data. Consider your risks and review your insurance coverage. Educate your employees about this scam and others. Refer to the information about fraud prevention and scams.

Below are two example emails from scammers:

> **From:** [scammer, impersonating a legitimate lawyer]
> **To:** [law firm employee]
> **Subject:** Re: I will need your help today
>
> I will need 6 qty of $100 worth Apple iTunes Gift Card. Note that $100 x 6 qty of iTunes Gift Card is needed. You should Scratch-off the back code and email a clear picture of all the codes if you can get the physical card at the store because am sending it out to a client.
>
> Kindly make it happen with your funds, you will be reimbursed once am done.
>
> Thanks.

> **From:** [scammer, impersonating a legitimate lawyer]
> **To:** [law firm employee]
> **Subject:** Are you in the office?
>
> I'm in a meeting and I will not be able to talk to you on phone. I need you to run an errand for me at the store, this is really urgent and important. Do let me know if you can?
>
> I need iTunes gift cards to send out to some client, can you confirm if we can get some as soon as possible? Will want you to make arrangements to get the gift cards so I can advise certain product and denominations to procure.
>
> Thank you.

Smartphone cheque deposit scam

A deposit scam previously reported in Nova Scotia and Manitoba has now been reported in BC. Below is a general description but the facts can vary.

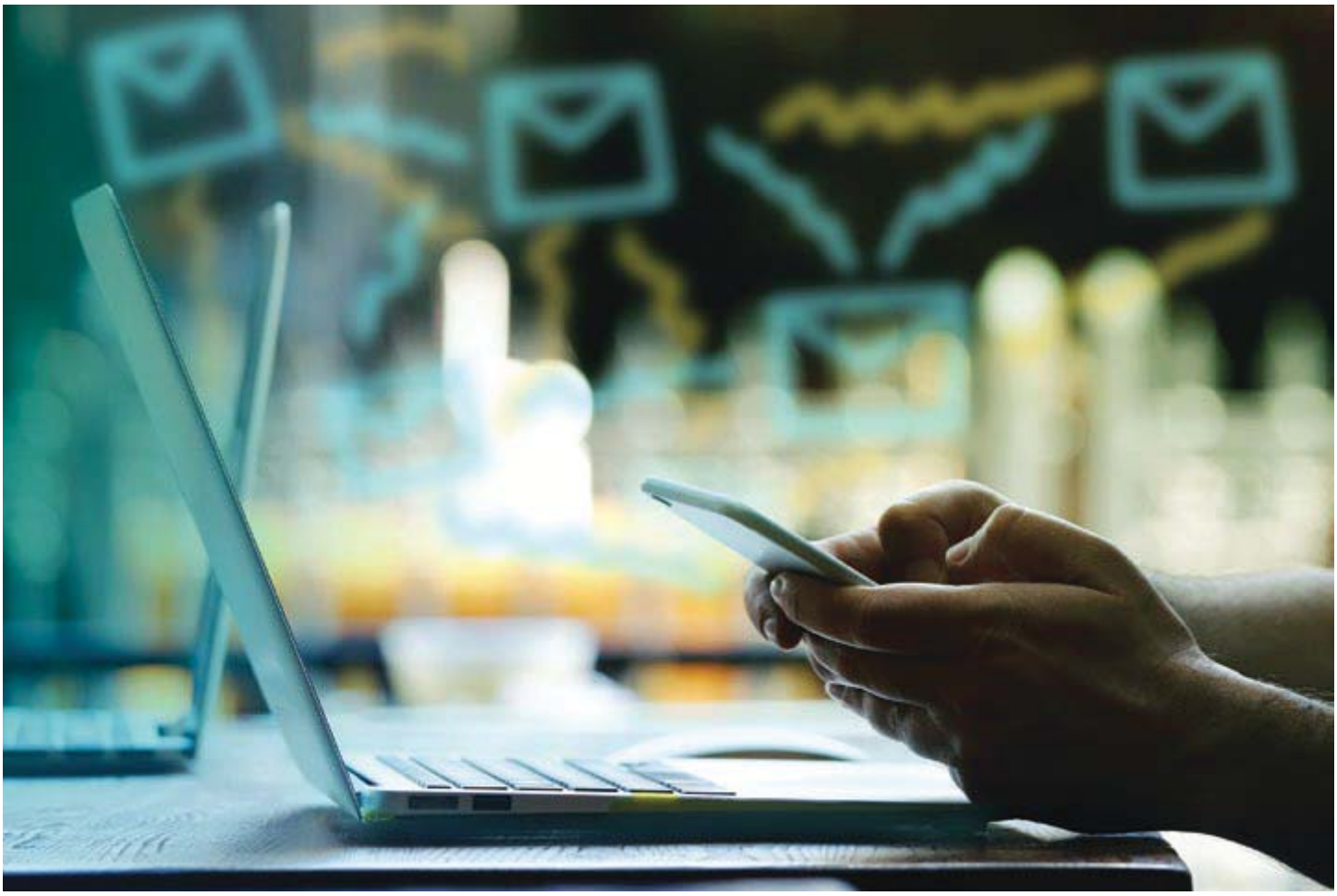
A lawyer provides his or her paper trust cheque to a client for settlement funds. The client takes a photo of the cheque and deposits it using the client's financial institution's app. Before the mobile deposit clears, the client quickly returns the paper cheque to the lawyer, requesting that the lawyer issue two new trust cheques payable to two different people, totalling the same amount as the original cheque. The lawyer voids the original cheque and issues two new cheques. The client then takes a photo of the two new cheques and deposits them, doubling the amount paid out of the lawyer's trust account.

Be cautious if someone asks for a replacement cheque. Contact your financial institution to find out if a mobile deposit was made and cleared, and discuss what steps you can take to protect yourself before issuing a replacement cheque. Consider contacting the Law Society's Trust Assurance department (trustaccounting@lsbc.org) for advice as well.

Fake law firms and lawyers

Some BC lawyers have reported that scammers have replicated their law firm websites, giving the firm a new name (sometimes a name similar to a legitimate firm) and inserting a phony lawyer's name and contact information. The scammers often ask individuals to claim, in partnership with the lawyer, that they are a beneficiary under a life insurance policy of a deceased client of the fake lawyer. This is an old scam; however, what is new is the use of a phony, replicated website. Below is an extract from one of the letters from a fake lawyer to a potential victim:

> My name is [fake lawyer's name]. I am a partner at [fake law firm].



It may surprise you to receive this letter from me, since there has been no previous correspondence between us. There is an unclaimed "permanent life insurance policy" held by our deceased client.

The transaction pertains to an unclaimed "Payable-on Death" ("POD") savings monetary deposit in the sum of Sixteen Million Eight Hundred Thousand Dollars ($16,820,063) with a Canadian bank. The policy holder was one of our clients, [insert any name that includes the same surname as the addressee], who worked with Energy Company in Canada. He died in an accident in Vancouver Canada, Eight years ago. Since His death no one has come forward for the claim and all our efforts to locate His relatives in USA have proved unsuccessful.

The insurance company code stipulates that "insured permanent policies" not claimed must be turned over to the abandoned property division of the state after 8 years.

Therefore, I ask for your consent to be in partnership with me for the claim of this policy benefit, in view of the fact that you share the same last name and nationality with the deceased. If you permit me to add your name to the policy, all proceeds will be processed on your behalf. I wish to point out that I want 10% of this money to be shared among charity organizations while the remaining 90% will be shared between us.

This is 100% risk free; I do have all necessary documentation to expedite the process in a highly professional and confidential manner. I will provide all the relevant documents to substantiate your claim as the beneficiary. This claim requires a high level of confidentiality and it may take up to thirty (30) business days, from the date of receipt of your consent.

Please contact me via: (email: [scammer's email address and phone number]

[fake BC lawyer's name]
Attorney

If you are contacted by a lawyer you do not know, look up the lawyer's name independently for the correct name, firm name and contact information. Make sure that you are dealing with a legitimate person. If a person purporting to be a BC lawyer uses the word "attorney" in a letter's signature line, this is a red flag. "Attorney" is an American term for a lawyer that a BC lawyer normally wouldn't use unless called to the bar in the United States. The standard use of the word "attorney" in BC is an attorney under a power of attorney, not a lawyer. The word "attorney" is not used in the *Legal Profession Act*, the Law Society Rules or the *BC Code* as a substitute for "lawyer."

Search your firm's name and your own name regularly to check how your names are being used on the internet.

Reporting new scams

Report potential new scams against lawyers to Practice Advisor Barbara

Buchanan, QC at bbuchanan@lsbc.org or 604.697.5816. Reporting allows us to know what scams lawyers are experiencing. This helps us to notify BC lawyers about scams, provide guidance and update our website.

CLIENT ID AND VERIFICATION RESOURCES

The Law Society of BC's Client Identification and Verification Procedure Checklist (which is current to September 1, 2018 and part of the larger *Practice Checklists Manual*), FAQs and an online course are based on Law Society Rules 3-98 to 3-109. In October 2018, the Council of the Federation of Law Societies of Canada (the coordinating body of Canada's 14 provincial and territorial law societies) approved amendments to the Federation's Model Rule on Client Identification and Verification and the Model Rule on Cash Transactions. In addition, the Council approved a new Model Trust Accounting Rule. The Federation took into account amendments to regulations under the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (regulatory amendments came into force in June 2016, June 2017 and January 2018; further regulatory amendments are proposed) and Anti-money laundering and terrorist financing measures in Canada (September 2016) by the Financial Action Task Force.[1]

The Federation will forward the model rule changes and the new Model Trust Accounting Rule to the law societies for adoption. Changes to BC's rules require the Benchers' approval and, if approved, would affect parts of the current checklist and related resources. Accordingly, when you receive communications from the Law Society, keep abreast of rule changes.

Good client identification and verification practice consists of more than simply complying with the basic technical requirements of the rules and retaining records for the requisite period. Knowing one's client goes beyond this. Keep informed about common and new money laundering or terrorist financing schemes to prevent being duped. Unsavoury clients may try to involve lawyers in sham litigation, improper real estate transactions, phony loans, and creating companies, trusts and charities for the purpose of money laundering or terrorist financing. Red flags may include the client's choice of lawyer (e.g., frequent change of lawyer, engaging an inexperienced lawyer, engaging a lawyer from an unrelated jurisdiction). The client may be willing to pay higher fees than normal for little or no substantive legal services. Obtain information about the amount and source of funds related to the retainer (e.g., third-party funding; funds from high-risk countries; a large transaction, especially if involving a recently created entity).

Other things to consider include who the client is (e.g., whether the client is a politically exposed person, either domestically or for a foreign government).[2] The definition of "client" is broad.[3] Consider the type of service requested and whether the transaction involves a tax haven, high-risk jurisdiction or sanctioned country. Further federal legislation and regulations may also need to be considered. For example, might this involve a person whose assets are subject to regulations under the *Freezing Assets of Corrupt Foreign Officials Act*? Is the person's name (individual or entity) on the Lists of Names subject to the Regulations Establishing a List of Entities made under subsection 83.05(1) of the *Criminal Code*? Does the Canadian government have sanctions against the client under the regulations to the *Special Economic Measures Act*? The regulations impose various sanctions against designated individuals and entities. Is the individual a listed foreign national in the schedule to the regulations to the *Justice for Victims of Corrupt Foreign Officials Act* (Sergei Magnitsky Law)? You may be restricted or prohibited from providing some legal services (e.g., facilitating, directly or indirectly, a financial transaction related to property, wherever situated, of the sanctioned client).

Lawyers must assess whether they could be knowingly or unknowingly assisting a client in dishonesty, fraud or other illegal conduct. This is an ongoing professional responsibility and, where there are signs of dishonesty, fraud or other illegal conduct, the lawyer should not act or withdraw from representation (Law Society Rule 3-109 and *BC Code* rules 3.2-7 to 3.2-8).

Some helpful resources that include case studies, red flags and common money laundering methods and techniques (although not written expressly for lawyers), are FINTRAC's Operational briefs and alerts and Typologies and Trends Reports. For example, Operational Brief: Indicators of Money Laundering in Financial Transactions Related to Real Estate (November 2016) includes a detailed table of indicators to help assess suspicious real estate transactions (e.g., buyer negotiates a purchase for the market value or more, requests that a lower value be recorded on documents and pays the difference under the table; loan is for more than market value; buyer pays with money from a third party unrelated to the transaction; buyer is from a jurisdiction with a weak anti-money laundering regime or a high level of political corruption). For a resource written for lawyers, see *A Lawyer's Guide to Detecting and Preventing Money Laundering* (October 2014).[4] Although not directed at Canadian lawyers, it provides lawyers with practical guidance about how criminals may try to use lawyers and how to minimize risks, and it includes case studies illustrating red flags that may arise when providing legal services.

If you have a practice question regarding client identification and verification, contact Barbara Buchanan, QC at bbuchanan@lsbc.org. For questions regarding cash and accounting rules, contact trustaccounting@lsbc.org.

1. The Financial Action Task Force is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction.

2. Section 9.3(3) of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*.

3. A "client" includes another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services as well as an individual who instructs the lawyer on behalf of a client in relation to a financial transaction. See Law Society Rule 3-98.

4. Prepared by working groups of the International Bar Association, the American Bar Association and the Council of Bars and Law Societies of Europe.

Holiday scam alert

Lawyers are advised to be alert for scams during the upcoming holidays, keeping in mind that scammers take advantage of reduced staff during the holiday period. If you will be away, arrange for a competent lawyer to supervise your practice and provide the lawyer and your staff with your contact information. *Your staff cannot deal with trust funds, except in accordance with the Law Society Rules, Division 7 – Trust Accounts and Other Client Property*. Ensure you and your staff maintain an awareness of the different scams, including the bad cheque scam. Review the names and documents fraudsters have attempted to use against BC lawyers. Be vigilant about the Law Society's client identification and verification rules (3-98 to 3-109). If you suspect that you have encountered a fraud in BC, contact Barbara Buchanan, QC, Practice Advisor, at 604.697.5816 or bbuchanan@lsbc.org.

Practice advice



by Barbara Buchanan, QC, Practice Advisor

SCAMS AGAINST LAWYERS PERSIST – WHAT ARE THEY AND WHAT CAN YOU DO ABOUT THEM?

Clients come to lawyers for wise counsel. However, fraudsters pretending to be clients also come to lawyers, looking to walk away with some trust account money. Have you been the target of a scam in your law practice? If not, it may only be a matter of time until you or someone else at your firm is targeted.

Law firms generally have good physical office security and cyber-security systems, including anti-virus programs, strong and secure passwords, firewalls and staggered back-up systems (see our 10 simple security tips here). Unfortunately, it takes just one lawyer or employee to be inattentive — leaving a laptop, thumb drive or briefcase in the car, leaving an office door unlocked, or being duped by a scammer into doing the wrong thing — to potentially cause financial loss, unauthorized access to confidential information, inconvenience and more. Security needs to be more than a good cyber-security system; it needs to involve education and policies for all employees.

Some common scams against lawyers

Being alert to the various scams directed at lawyers can protect you and your firm. The most common scam attempted against BC lawyers is what we colloquially refer to as the "bad cheque scam." It should be noted that it does not always involve a bad cheque. This is a type of social engineering scam that tricks lawyers into believing, wrongly, that real funds have been deposited into trust. Others include the phony change in payment instructions (a scammer sends an email purportedly from an actual client or, as in a recent scam in Saskatchewan described in the Law Society of Manitoba's *Communiqué* (p. 10), from another law firm with new instructions about where to send funds) and the phony direction to pay (a scammer sends an email purportedly from a lawyer in your firm asking you to transfer funds). Scammers might also trick you into clicking on an infected link that exposes you to malware, allowing the scammer to steal passwords and confidential information, or you might find yourself the victim of a ransomware attack that locks your files and makes them inaccessible. There are other kinds of scams to look out for too, such as value fraud (inflating the price of real property to obtain a bigger mortgage), fraudulent investment schemes and phony lawyers.

For information about these and other scams, and suggestions on how to protect yourself, see Fraud Prevention and Fraud Alerts on our website. For a look at frauds against the broader population, see the government's Canadian Anti-Fraud Centre website.

Also, see *BC Code* rules 3.2-7, 3.2-8 and 3.7-7(b) for ethical guidance with respect to dishonesty and fraud by clients, and Law Society Rule 3-109 regarding a client's criminal activity.

The bad cheque scam

Scammers continue to pretend to be legitimate new clients, using tricks such as a phony debt collection scam, the phony purchase and sale of equipment, such as vessels, or other ruses. Whatever their stratagem, the scammer's aim is usually to coerce a lawyer to deposit a fraudulent financial instrument, such as a bank draft, certified cheque or third-party business cheque, into a trust account, and then to trick the lawyer into electronically transferring funds to the scammer before the lawyer finds out that the instrument was worthless. The scams range in sophistication from the very obvious to the highly refined. Although most lawyers come to realize that they have become involved in a bad cheque scam before paying money out of trust, some lawyers have been caught. In any case, lawyers often waste valuable time and resources before appreciating the truth: their new client is not a new client at all but, rather, is someone who is trying to steal from them.

Protect yourself. Get familiar with the scam's common characteristics and risk management tips. Review the bad cheque scam list of names that scammers have used in BC (an alphabetical list from A to Z), along with various ruses and documents, as part of your firm's intake process. Appoint someone in your firm to ensure that lawyers and staff are kept up to date with Law Society notices.

Remember that when a new client resides outside of Canada and you need to verify identity for a "financial transaction" (as defined in Law Society Rule 3-91), you must have a written agreement or arrangement with an agent who will meet with the client to verify the client's identity. A sample agreement with an agent for verification of a client's identity is in Appendix II of the Client Identification and Verification Procedure Checklist in the Practice Checklists Manual.

The Lawyers Insurance Fund, Practice Advice department and Continuing Legal Education Society of BC presented a free one-hour webinar for lawyers regarding

these scams: *The bad cheque scam – don't get caught*. Visit the CLEBC website to view the webinar.

Report potential new scams to practice advisor Barbara Buchanan, QC at bbuchanan@lsbc.org. Reporting allows us to know what scams lawyers are experiencing, to notify the profession and to update the list of names, documents and ruses.

WHAT GDPR MEANS AND HOW IT MAY APPLY TO YOU

The European Union's General Data Protection Regulation (GDPR) is a new global standard for privacy legislation. It came into force on May 25, 2018 and requires private sector organizations, which can include Canadian law firms, to comply with significant obligations with respect to EU residents' personal data. Even if your law firm does not have an office in the EU, you may offer goods and services to individuals in the EU or monitor the behaviour of individuals in the EU and thus acquire obligations. If you operate in the EU, have clients in the EU, or collect, use or disclose personal information of an EU "data subject" (the identified or identifiable natural person who is the subject of the personal data), you will likely need to comply with the GDPR. Organizations that fail to comply potentially face large fines, higher than those under the *Personal Information Protection Act*.

The Office of the Information & Privacy Commissioner for British Columbia has prepared helpful guidance, *Competitive Advantage: Compliance with PIPA and the GDPR*. The guidance document explains that "it helps organizations in BC determine whether they are subject to the GDPR and explains how to comply with both PIPA and the GDPR." Some aspects of the GDPR have no equivalent in PIPA or may be different or more challenging (e.g., mandatory breach notification within 72 hours).

PRACTICE CHECKLISTS MANUAL

Whether you are recently called or a senior lawyer, checklists help keep you organized and prevent you from failing to ask important questions or miss important steps. Check out the Law Society's Practice Checklists Manual, free and updated yearly with the assistance of the Continuing Legal Education Society of BC and many contributors). The 2017 update reflects *BC Code* rule changes, Law Society Rule changes, legislative amendments, new cases and changes in practice (see Highlights of the 2017 Practice Checklists Manual and refer to the individual checklists for more details).

The manual, a professional reference for lawyers, consists of 41 checklists in the following subject areas:

- client identification and verification;
- corporate and commercial;
- criminal;
- family;
- litigation;
- real estate;
- wills and estates;
- human rights; and
- immigration.

While the checklists are comprehensive, they are not exhaustive, so consider the checklists as a secondary resource to assist you in organizing a matter. Because the checklists are available in Microsoft Word format, you can download and customize them to suit your particular practice.

CAUTION ABOUT WITNESSING NONSENSICAL DOCUMENTS

Lawyers are reminded that, if an organized pseudolegal commercial argument litigant (known as an OPCA litigant — a term coined by Rooke, J. in *Meads v. Meads*, 2012 ABQB 571, which includes freemen-on-the-land, detaxers, sovereign men, natural persons and others) attends your office, you should not witness or notarize nonsensical documents, potentially giving an air of credibility to them and disrupting court operations. Generally discourage individuals from commencing useless proceedings (*BC Code* section 2.1 Canons of Legal Ethics, and rules 2.1-1(a) and 3.2-4). See more information about OPCA litigants in prior *Benchers' Bulletins* ("Freeman-on-the land and OPCA litigants," Spring 2017 and "The Freeman-on-the-Land movement," Winter 2012) as well as in a number of court decisions, including *Little Shuswap Lake Indian Band v. August-Sjodin*, 2016 BCSC 1214 (CanLII). For broader guidance about witnessing signatures, see *BC Code* Appendix A – Affidavits, Solemn Declarations and Officer Certifications and its annotations, and for other tips about witnessing signatures, see Witnessing a signature? Stop. Read this first. on our website. ❖

Services for lawyers

Law Society Practice Advisors

Barbara Buchanan, QC
Brian Evans
Claire Marchant
Warren Wilson, QC

Practice advisors assist BC lawyers seeking help with:

- Law Society Rules
- *Code of Professional Conduct for British Columbia*
- practice management
- practice and ethics advice
- client identification and verification
- client relationships and lawyer-lawyer relationships
- enquiries to the Ethics Committee
- scams and fraud alerts

Tel: 604.669.2533 or 1.800.903.5300.

All communications with Law Society practice advisors are strictly confidential, except in cases of trust fund shortages.

◆

LifeWorks – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families.
Tel: 1.888.307.0590.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no additional cost to lawyers.
Tel: 604.685.2171 or 1.888.685.2171.

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, law student and support staff of legal employers.
Contact Equity Ombudsperson **Claire Marchant** at tel: 604.605.5303 or email: equity@lsbc.org.

Practice advice



by Barbara Buchanan, QC, Practice Advisor

CLIENT CONFIDENTIALITY – THINK TWICE BEFORE TAKING YOUR LAPTOP OR SMART PHONE ACROSS BORDERS

Lawyers cannot necessarily rely on a claim of privilege or confidentiality to protect clients' confidential information when crossing borders. Border officials may ignore such protestations and a trip may be ruined or cancelled. Accordingly, lawyers should carefully consider whether they might be risking exposure of clients' confidential information to government officials when crossing borders and take appropriate steps before travelling.

In recent months there has been a flurry of news reports about U.S. border officials asking foreigners entering the U.S. to voluntarily disclose their social media accounts (e.g., Twitter, LinkedIn, Facebook, Instagram) as a terrorism prevention measure. In addition, there has been discussion that the U.S. administration may require foreigners to provide their social media account passwords and cellphone contacts. Individuals have reported that border officials have demanded their phone passwords, read their text messages and downloaded their computer hard drive content.

Rule 3.3-1 of the *Code of Professional Conduct for British Columbia* requires that a lawyer at all times must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship. The lawyer must not divulge the information except in accordance with the limited exceptions in the Code. The ethical rule of confidentiality is wider than privilege (all privileged information is confidential, but not all confidential information is privileged). For example, even the fact that a lawyer acts for a client is confidential, as is the client's contact information (which in some cases may be privileged as well).

If a border official accesses a client's confidential information on a lawyer's electronic device, the lawyer is required to immediately notify the Law Society's executive director in writing of all the relevant circumstances (Law Society Rule 10-4).

Lawyers are encouraged to establish a policy within their firms about cross-border travel and discuss their needs with their technology professionals. A safe course is to travel without any confidential client information on electronic devices (unless the client specifically consents). Some firms have separate laptops available for travel. These laptops have no client information and only contain the basics needed for operating.

A Canadian Bar Association resource, *How to Secure Your Laptop Before Crossing the Border* (updated August 2009) provides a number of detailed tips: www.cba.org/Publications-Resources/CBA-Practice-Link/Young-Lawyers/2008/How-to-secure-your-laptop-before-crossing-the-bord. Also see the whitepaper, *Digital Privacy at the U.S. Border: Protecting the Data on Your Devices and in the Cloud*, March 2017, published by the Electronic Frontier Foundation: www.eff.org/wp/digital-privacy-us-border-2017.

POWER OF ATTORNEY – WHAT DO I DO IF AN ATTORNEY ASKS FOR INFORMATION ABOUT MY CLIENT OR FROM MY CLIENT'S FILE?

If you are contacted by a person who says that they are an attorney acting under a power of attorney, and they want confidential or privileged client information from you, take a step back to thoroughly assess the situation. Generally, you must hold in strict confidence all information concerning the business and affairs of a client acquired in the course of the professional relationship. *BC Code* rules 3.2-9, 3.3-1, 3.3-2, 3.3-2.1, 3.3-3, 3.3-5 and 3.3-6 and the annotated opinion from the Ethics Committee (October 2014) can provide some guidance.

You will need to determine, among other things, if the client is capable of providing consent for you to divulge information. If the client is not capable, and the client did not provide clear consent to provide the confidential or privileged information to the attorney, it is not improper to require the attorney to obtain a court order. Remember that the duty of confidentiality is wider than the common law concept of privilege and that the duty continues indefinitely even if others share the same knowledge. See the opinion for details. Consider contacting a practice advisor.

CLIENT ID AND VERIFICATION – RESOURCES AND AUDITS

The client identification and verification rules (Law Society Rules 3-98 to 3-109),

along with the cash transaction rules (Rules 3-59 and 3-70), are an important part of the legal profession's commitment to fight against money laundering and terrorist financing while protecting clients' confidential information.

Are you properly identifying and verifying your client's identity? Would you pass an audit with flying colours? If you're not sure, contact a practice advisor to discuss the requirements but, before doing that, consider viewing the free one-hour Client Identification and Verification Online Course (part 3 of the 2016 Courthouse Libraries BC series, *The Practical Lawyer*). Also, download the Client Identification and Verification Procedure Checklist (updated to September 1, 2016) and read the related frequently asked questions in the Support and Resources for Lawyers section of our website. Don't miss the checklist's two appendices that include a commissioner or guarantor's sample attestation form for the verification of a client's identity in Canada and a sample agreement with an agent for the verification of a client's identity outside of Canada and the agent's attestation form.

BEWARE OF A CHANGE IN PAYMENT INSTRUCTIONS AND "PHISHING"

Lawyers have been cautioned to beware of a change in payment instructions on a client's file, email "phishing" and other scams: see the fraud alert, Fraudsters again target lawyers disbursing trust funds (January 19, 2017 Notice to the Profession), Scams against lawyers – What are they and what can you do about them? (Practice advice, Fall 2016 *Benchers' Bulletin*) and the Fraud Prevention section on our website (includes the bad cheque and other social engineering scams) for more details and information on how to set up systems to protect yourself. If you are about to pay out trust funds and the payment instructions change, check thoroughly to ensure that the new instructions are legitimate. A scammer may have accessed the email account of an individual privy to the transaction and assumed that person's identity. The scammer may email or phone the law firm and provide instructions to wire the funds to an unintended destination. A BC law firm was recently targeted and it is likely that the scam will continue as the potential payoff for a scammer is large.

Keep on top of new variations of scams that the Law Society notifies the profession about and that continue to develop — such as a fraud in which phony email instructions are sent directly to a client, not the lawyer (noted in the February 2017 E-Brief). Make it a priority to read the email notices sent out by the Law Society.

FUNDS THAT ARE FIDUCIARY PROPERTY

The Law Society Rules were changed in June 2016 so that funds that are fiduciary property may now be held in a trust account, provided that the trust accounting rules are followed (Rules 3-55(6), 3-60(4) and 3-61(3)). The Rule 1 definitions state:

> **"fiduciary property"** means
>
> (a) funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity or as a trustee, if the lawyer's appointment is derived from a solicitor-client relationship,
>
> but does not include
>
> (b) any funds and valuables that are subject to a power of attorney granted to the lawyer if the lawyer has not taken control of or otherwise dealt with the funds or valuables;

If you have questions about the accounting rules related to fiduciary property, contact the Trust Assurance department at trustaccounting@lsbc.org or 604.697.5810.

WHAT TO DO IF YOUR LAPTOP OR BRIEFCASE IS STOLEN

Practice advisors sometimes receive calls from panicked lawyers who have just had their laptop or briefcase stolen and do not know what to do. If your laptop or briefcase has been stolen or if you have otherwise lost control of your client's records, consult your security breach response plan. A "record" includes accounting records and supporting documents (trust account, general account, cash transaction and billing records), client identification and verification information and documents, metadata associated with electronic records, and client file documents, whether in paper or electronic form.

If you do not have a security breach response plan, below is a short list of procedures to consider (not a substitute for a detailed plan). Determine the applicability of the procedures and their order in context.

1. Establish your response team, its responsibilities and its priorities, including a communication plan to staff and others.
2. Contact your IT professionals to identify the problems, contain damage (they may have immediate tips) and advise you as to whether any client or banking records are compromised.
3. Report to your insurers immediately. If you bought cyber liability or other insurance to respond to a security breach, coverage may include assistance from data breach consultants and others regarding required steps, including procedures in this list. Contact the Lawyers Insurance Fund at the Law Society to see if you should also be making a written report to them.
4. If bank accounts and credit cards are at risk, contact those organizations. Consider recommendations and take steps to contain damage.
5. Contact a practice advisor if you have questions regarding your professional responsibilities (604.669.2533).
6. Report to the Law Society's Executive Director, c/o Manager, Intake and Early Resolution in writing at professionalconduct@lsbc.org (as required under Rule 10-4, Security of records). Do not use your work email to report unless your IT professional says that it is safe.
7. Figure out your legal obligations, including any obligations to third parties (e.g., other counsel, parties, the court). You may need to consult outside counsel.
8. Inform your clients if their information has been compromised or lost. It may be appropriate to recommend that the clients get independent legal advice. If the information obtained from the breach includes social insurance numbers, credit cards, driver's licence information, bank information or health cards, the clients may be exposed to identity fraud and loss.
9. You may need to set up a telephone

another firm. In August 2016, an Ontario lawyer's email address was spoofed, directing a client to wire funds to a different bank account to complete a purchase, citing a restructuring of the firm's finance department. A follow-up phone call was reportedly made to the client, which displayed the lawyer's firm number.

HOW DO YOU PROTECT YOURSELF?

See our web page, Fraud: Alerts and Risk Management, for more information about how to identify the bad cheque scam and other fraud schemes. Become familiar with the bad cheque scam names and documents list as well as the common characteristics and red flags and ongoing twists and developments. Review the bad cheque scam names and documents web page as part of your firm's intake process, particularly if the client makes initial contact by email and professes to be outside of Canada. If the potential client's name is not on the list, do a Google search of the name and the other party's name. A name search combined with the word "fraud" or "scam" may bring up information about a legitimate business whose cheques were altered or counterfeited by a scamster. There is an abundance of information on the Internet about scams.

Follow the client identification and verification rules (Rules 3-98 to 3-109). Compliance with the rules is a prerequisite for coverage under the compulsory policy's trust shortage liability insurance, if a lawyer suffers a trust shortfall as a result of the bad cheque scam. Download the Client Identification and Verification Procedure Checklist in the *Practice Checklists Manual* and read the related frequently asked questions in the Practice Resources section of our website. Appendix 1 of the checklist is a sample attestation for the verification of identity of a client who is in Canada, but not physically present before the lawyer. Appendix II is a sample agreement between the lawyer and the lawyer's agent to verify the identity of a client who is outside of Canada (frequently claimed to be the case in the bad cheque scam). Appended to the agreement is a sample attestation form for the agent's use. Select the commissioner, guarantor or agent yourself so that you do not fall victim to setting up the situation for a potential scammer to provide you with a phony attestation.

If you suspect it is a bad cheque scam, either decline to act or require payment to be made directly between the parties rather than through your trust account.

Watch the free webinar for lawyers, *The bad cheque scam – don't get caught*, available in the Practice Resources section of our website (one-hour CPD credit available).

Appoint someone in your firm to keep lawyers and relevant staff up to date with information from the Law Society. Subscribe to the Fraud Alerts RSS feeds and encourage non-lawyer staff to subscribe. Staff can also sign up for free electronic subscriptions to the *Benchers' Bulletin* (includes Notices to the Profession and E-Brief).

Consult with your IT professional regarding your antivirus software, strong passwords and other security information. Speak with your bank about other steps that you can take to enhance security, including the advantages of receiving trust funds electronically.

If you need commercial liability insurance, buy it. Although the compulsory policy provides some coverage for the bad cheque scam if the prerequisites are met, it does not otherwise respond to thefts or trust shortages caused by frauds. However, insurance is available commercially for various forms of fraud. Talk to your broker about what is available. For more information and a list of brokers, read our web pages, Other commercial liability insurance products: Protection for claims that our policy does not cover and List of excess and other commercial liability insurance brokers.

Report potential new scams by sending an email to fraud@lsbc.org. Call a practice advisor for advice if you are uncertain about how to apply the client identification and verification rules or want other confidential advice.

Report confirmed scams to the Government of Canada's Canadian Anti-Fraud Centre (CAFC). Although fraud attempts against lawyers are not specifically targeted, the CAFC collects information and criminal intelligence regarding various types of fraud complaints. In addition, they provide information and resources to protect yourself, such as the *Get Cyber Safe Guide for Small and Medium Businesses*.❖

Services for lawyers

Law Society Practice Advisors

Dave Bilinsky
Barbara Buchanan, QC
Lenore Rowntree
Warren Wilson, QC

Practice advisors assist BC lawyers seeking help with:

- Law Society Rules
- *Code of Professional Conduct for British Columbia*
- practice management
- practice and ethics advice
- client identification and verification
- client relationships and lawyer-lawyer relationships
- enquiries to the Ethics Committee
- scams and fraud alerts

Tel: 604.669.2533 or 1.800.903.5300.

All communications with Law Society practice advisors are strictly confidential, except in cases of trust fund shortages.

◆

Optum Health Services (Canada) Ltd. – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families.
Tel: 604.431.8200 or 1.800.663.9099.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no additional cost to lawyers.
Tel: 604.685.2171 or 1.888.685.2171.

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson **Anne Bhanu Chopra** at tel: 604.687.2344 or email: achopra1@novuscom.net.

Resources > Client Files. If you are withdrawing from a file because you are changing firms, refer to rule 3.7-1, commentary [4] to [10] and the information available at Practice Support and Resources > Lawyer leaving law firm.

4. Does my client have capacity?

Refer to rules 3.2-9 and 3.3-1, commentary [10] of the *BC Code*. When a client's ability to make decisions is impaired because he or she has a mental disability (or is a minor), the lawyer must maintain a normal lawyer and client relationship as far as reasonably possible. Although a doctor's assessment may assist in determining capacity, ultimately it is a legal test, and you must make the decision whether the client has capacity. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision (rule 3.2-9, commentary [1]).

If you decide to engage a doctor or other professional to assist in making the determination, it is crucial that the professional understand the nature of the decision to be made by the client. Often the client has the capacity to make certain decisions, even though the doctor's opinion may be that she or he generally has an impaired mental state. It can be worthwhile to find out if the client has better times of day or conditions (e.g., before or after medication) that can assist with his or her mental functioning when a decision needs to be made.

Further information on capacity is on our website at Lawyers > Practice Support and Resources > Capacity: "Acting for a client with dementia" (Practice Watch, Spring 2015 *Benchers' Bulletin*) and the BC Law Institute Report on Common-Law Tests of Capacity. If there are issues with a client's capacity, there may also be concerns about undue influence. For insight into undue influence and a checklist for recognition and prevention, see the BC Law Institute's Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide (Practice Support and Resources > Wills).

If the client is incapable of giving instructions and if you reasonably believe he or she has no other agent or representative and a failure to act will result in imminent and irreparable harm, you may take action to the extent necessary to protect the person (rule 3.2-9, commentary [2] to [5]). Rule 3.3-1, commentary [10] makes an exception to the duty of confidentiality in such a circumstance.



5. Where can I find information on client identification and verification?

Read Law Society Rules 3-98 to 3-109. See also the extensive information available on our website at Lawyers > Practice Support and Resources > Client Identification and Verification. You will find a Client Identification and Verification Checklist, a sample attestation form for verification of identity attached to the Checklist as Appendix I, a sample agency agreement attached to the Checklist as Appendix II, and FAQs devoted to this topic.

6. How do I deal with the tax components of my bill?

There are several resources on our website at Lawyers > Practice Support and Resources > Law office management > Tax. However, the Law Society is not able to provide tax advice. We suggest you contact your bookkeeper or accountant or a tax lawyer if you have specific questions and refer to the following resources:

- BC Ministry of Finance Bulletin PST 106 – Legal Services at www.sbr.gov.bc.ca/documents_library/bulletins/pst_106.pdf;
- Provincial Sales Tax FAQs at www2.gov.bc.ca/gov/content/taxes/sales-taxes/pst/faqs (or email CTBTaxQuestions@gov.bc.ca);
- Canada Revenue Agency (CRA) GST/HST Policy Statement P209R – Lawyers' disbursements (taxable/nontaxable) at www.cra-arc.gc.ca/E/pub/gl/p-209r/README.html; and

Practice advice



LAWYER-LAWYER AND LAWYER-STAFF DISPUTES – MEDIATION OPTION

HAVE YOU LOST your temper and told another lawyer to do something that might be more appropriately included in a late night adult comedy sketch? Is personal animosity between you and another lawyer negatively affecting a client's file? Or your sleep, perhaps?

Practice advisors frequently receive calls from lawyers engaged in disputes with other lawyers. Many relate to a lawyer leaving a firm when emotions have escalated from a slow simmer to a roiling boil (see "Ethical considerations when a lawyer moves on" in Practice Watch, *Benchers' Bulletin*, Summer 2014 for guidance on a lawyer leaving a firm). Other disputes are often between two lawyers on opposite sides of a litigation file where one lawyer is name-calling, swearing, yelling and being generally uncooperative.

Practice advisors give confidential practice and ethics advice to lawyers, including advice about improving professional communication, but they do not mediate disputes between lawyers, their staff or firms. If appropriate, advisors may refer callers to the Canadian Bar Association, BC Branch's Dispute Resolution Service. The service is generally free and is even available to BC lawyers who are not members of the CBA. Lawyer mediators volunteer their time and will speak with you about the problem. If both parties agree, the dispute can be submitted for mediation. A fee-for-service mediation may be recommended if the matter is complex. Of particular interest, not only will the mediators deal with disputes between lawyers, the service also extends to lawyer-staff disputes, such as an issue with a bookkeeper, legal assistant or paralegal. The service does not extend to issues that are required to be reported to the Law Society.

For more information concerning the CBABC's Dispute Resolution Service, call 604.646.7864 or go to their website under Advocacy (see cbabc.org/drs). For help with communication generally, see the free *Communication Toolkit* under Practice Support and Resources on our website or consult a practice advisor.

CLIENT IDENTIFICATION AND VERIFICATION – 2015 UPDATES AND SCAMS

The Law Society's client identification and verification rules (Rules 3-98 to 3-109) and the rules regarding cash transactions (Rules 3-59 and 3-70) play an important role in anti-money laundering and in uncovering some scams. The Client Identification and Verification Procedure Checklist (part of the *Practice Checklists Manual*) and the Frequently Asked Questions, both located under Practice Support and Resources on our website, were updated in July 2015. You can report potential new scams by sending an email to fraud@lsbc.org. Reporting allows us to notify the profession, as appropriate, and update the fraud information on the website.

2015 UPDATES – FAMILY LAW AND WILLS AND ESTATES CHECKLISTS

Don't miss an important step. Use checklists. Whether you're a senior lawyer or a new lawyer, checklists can help keep you organized, preventing errors and complaints. You can keep track of what steps should be taken, what you've completed and what is left to do. Further, checklists sometimes flag potential issues that may not have even occurred to you.

The following family law and will and estates checklists, part of the *Practice Checklists Manual* (in the Practice Support and Resources section of the website), have recently been updated and include a summary of some new developments in the introductory page to each checklist:

- Family Practice Interview, Family Law Agreement Procedure, Separation Agreement Drafting, Marriage Agreement Drafting, Family Law Proceeding, and Child, Family and Community Service Act Procedure
- Will Procedure, Will-Maker Interview, Testator Interview, Will Drafting, Probate and Administration Procedure

Watch for more updates to the manual later in 2015.❖

Practice watch

by Barbara Buchanan, Practice Advisor

LAWYER ACTING AS SURETY

IN THE *BC Code*, a "conflict of interest" means the existence of a substantial risk that a lawyer's loyalty to or representation of a client would be materially and adversely affected by the lawyer's own interest or the lawyer's duties to another client, a former client, or a third person (rule 1.1-1). The rules under section 3.4, provide detailed guidance about conflicts and include specific rules with respect to a lawyer acting as a surety:

> **Judicial interim release**
>
> 3.4-40 A lawyer must not act as a surety for, deposit money or other valuable security for, or act in a supervisory capacity to an accused person for whom the lawyer acts.
>
> 3.4-41 A lawyer may act as a surety for, deposit money or other valuable security for or act in a supervisory capacity to an accused who is in a family relationship with the lawyer when the accused is represented by the lawyer's partner or associate.

Accordingly, if a lawyer acts as a surety for an accused person, the lawyer should not concurrently act as the accused person's lawyer. A lawyer's judgment and freedom of action on a client's behalf should be as free as possible from conflicts; otherwise the client's interests may be seriously prejudiced. Any relationship or interest that affects a lawyer's professional judgment is to be avoided, including ones involving a relative, partner, employer, employee, business associate or friend of the lawyer (rule 3.4-26.1, commentary [1]).

Unlike BC, the Law Society of Alberta's *Code of Conduct* does not include specific rules regarding a lawyer acting as a surety for an accused. As has been reported in the case of Omar Khadr, one of the terms of the Alberta court order releasing him pending the appeal of his conviction in the US is that he must live with his lawyer in Edmonton. Our Ethics Committee has not considered whether a person in Khadr's position as an appellant would be considered an "accused person" under rule 3.4-40 and, consequently, whether it would be open to a BC lawyer to act as a surety during an appeal rather than in the first instance. Lawyers who wish to act as a surety are encouraged to contact a practice advisor for ethics advice.

HELP THWART SCAMS – FOLLOW THE CLIENT ID RULES AND BEWARE OF CHANGES TO PAYMENT INSTRUCTIONS

Scammers continue to pose as prospective clients and approach BC lawyers, using the phony debt collection scam or other ruses. Their goal is usually to coerce a lawyer to deposit a fraudulent financial instrument (often a bank draft or certified cheque) into a trust account, and then to trick the lawyer into electronically transferring funds to the scammer before the lawyer finds out the instrument is no good. A recent scam of a different nature targeted a BC lawyer disbursing trust funds. The scammer sent an email, purportedly from the client, with a change in payment instructions, directing that the funds be wired to a different account (see the May 7, 2015 Notice to the Profession).

The scammer sent an email, purportedly from the client, with a change in payment instructions, directing that the funds be wired to a different account.

Scams range from the obvious to the very sophisticated and everywhere in between. What can you do to protect yourself?

Verify the client's identity as required by Law Society Rules 3-98 to 3-109 (Rules 3-91 to 3-102 before July 1, 2015). Appreciate that compliance with the rules is a prerequisite for coverage under the compulsory insurance policy if a lawyer suffers a trust shortfall as a result of the bad cheque scam.

Use a checklist. See the updated checklist and frequently asked questions available in the Practice Resources section of our website. Appendix 1 of the checklist is a sample attestation for the verification of identity of a client who is in Canada, but not physically present before the lawyer. Appendix II is a sample agreement between the lawyer and the lawyer's agent to verify the identity of a client who is outside of Canada. Appended to the agreement is a sample attestation form for the agent's use. Select the commissioner, guarantor or agent yourself, rather than allowing a potential scammer to provide you with a phony attestation.

Get familiar with the common characteristics of these scams and the risk management tips on our website. Read the fraud notices from the Law Society (go to Fraud: Alerts and Risk Management). Review the bad cheque scam names and documents web page as part of your firm's intake process.

Watch the free webinar for lawyers: *The bad cheque scam – don't get caught*. Videos from the webinar presented by the Law Society (Lawyers Insurance Fund lawyers Margrett George and Surindar Nijjar and practice advisor Barbara Buchanan) and the Continuing Legal Education Society of BC are available on CLE's website. Check out the archive of the client identification and verification rules online course (Roy Millen and Barbara Buchanan), originally webcast by CLE, and available in the practice resource section of our website.

Appoint someone in your firm to keep lawyers and relevant staff up to date with new information from the Law Society. Since scammers may impersonate you, regularly perform internet searches of your own name and firm to see what turns up.

As insurance is available on the commercial market for these kinds of risks, talk to your broker. For a list of brokers, see the Lawyers Insurance Fund information regarding excess and other commercial liability insurance products on our website.

Report potential new scams to a practice advisor at 604.669.2533. Reporting allows us to notify the profession, as appropriate, and update the list of names and documents on our website.

authority to disclose necessary confidential information in some circumstances may be implied).

To explore whether it is appropriate to provide the legal services requested, some questions to consider include:

- Does the person appear to have the ability to understand information relative to the decision that has to be made?
- Does the person appear able to appreciate the reasonably foreseeable consequences of the decision or lack of decision?
- Does the person appear to be acting of his or her own free will, or do you suspect undue influence?
- What common law tests, statutory tests and rules of court may be applicable?

Commentary [1] to rule 3.2-9 provides:

> [1] A lawyer and client relationship presupposes that the client has the requisite mental ability to make decisions about his or her legal affairs and to give the lawyer instructions. A client's ability to make decisions depends on such factors as age, intelligence, experience and mental and physical health and on the advice, guidance and support of others. A client's ability to make decisions may change, for better or worse, over time. The key is whether the client has the ability to understand the information relative to the decision that has to be made and is able to appreciate the reasonably foreseeable consequences of the decision or lack of decision.

A medical diagnosis of dementia – Alzheimer's being the most common form – does not always mean that a person does not have capacity to provide instructions to a lawyer for all legal services at all times.

A client who has capacity issues may be vulnerable to undue influence by a third party putting pressure on the client to make decisions that may not be in the client's best interests. A lawyer has a responsibility to satisfy him or herself that the client's instructions reflect the client's true intent. The BC Law Institute (BCLI) published a guide in 2011, Recommended Practices for Wills Practitioners Relating to Potential Undue Influence: A Guide, which is available on the Law Society website (see Practice Support and Resources). The guide includes a checklist of recommended practices for screening potential undue influence that is useful, not only for will instructions, but for other personal planning documents and transactions as well.

COMMON LAW TESTS AND STATUTORY TESTS OF INCAPACITY

There is no one perfect, single test to determine capacity. Capacity should be assessed in the context of the decision to be made. For example, more capacity is required for a complex commercial transaction than for making decisions about clothing and food. There are common law tests of capacity for some matters (e.g. capacity to make a will, nominate a committee) and there are statutory tests that have been developed for some purposes (e.g. a representation agreement under the *Representation Agreement Act*, RSBC 1996, c 405; an enduring power of attorney under the *Power of Attorney Act*, RSBC 1996, c 370; or an advance directive to give or refuse consent to health care under the *Health Care (Consent) and Care Facility (Admission) Act*, RSBC 1996, c 18).

The BCLI published a *Report on Common-Law Tests of Capacity* (BCLI Report no. 73, September 2013) in which several common law tests of capacity are described: the capacity to make a will, to make a gift, to designate a beneficiary, to nominate a committee, to enter into a contract, to

FOLLOW THE CLIENT IDENTIFICATION RULES TO HELP THWART SCAM ATTEMPTS

Scamsters continue to pretend to be BC lawyers' legitimate new clients, either using the phony debt collection scam or other ruses. Whatever their stratagem, their end goal is usually to coerce a lawyer to deposit a fraudulent financial instrument (often a bank draft or certified cheque) into a trust account, and then to trick the lawyer into transferring funds electronically to the scamster before the lawyer finds out the instrument is no good. The scams range from the obvious to the very sophisticated and everywhere in between.

Protect yourself. Verify the client's identity as required by Law Society Rules 3-91 to 3-102. Use a checklist and read the answers to the frequently asked questions on our website to assist you with compliance.

Get familiar with the common characteristics of these scams and the risk management tips on our website (go to Fraud: Alerts and Risk Management). Review the bad cheque scam names and documents web page as part of your firm's intake process.

Appoint someone in your firm to keep lawyers and relevant staff up to date with new information from the Law Society. Since scamsters may impersonate you, regularly perform internet searches of your own name and firm, to see what turns up. Margrett George and Surindar Nijjar from the Lawyers Insurance Fund, Practice Advisor Barbara Buchanan and the Continuing Legal Education Society of BC presented a free webinar for lawyers: *The bad cheque scam – don't get caught*. Videos from the webinar are available on CLE's website. Check out the archive of the client identification and verification rules online course (Roy Millen and Barbara Buchanan), originally webcast by CLE, and available in the practice resource section of our website.

Report potential new scams to bbuchanan@lsbc.org. Reporting allows us to notify the profession, as appropriate, and update the list of names and documents on our website.

advice of the Society directly or indirectly (e.g., through another lawyer).

Nothing in this paragraph is meant to interfere with the lawyer-client relationship. In all cases, the report must be made without malice or ulterior motive.

Often, instances of improper conduct arise from emotional, mental or family disturbances or substance abuse. Lawyers who suffer from such problems should be encouraged to seek assistance as early as possible. The Society supports professional support groups in their commitment to the provision of confidential counselling. Therefore, lawyers acting in the capacity of counsellors for professional support groups will not be called by the Society or by any investigation committee to testify at any conduct, capacity or competence hearing without the consent of the lawyer from whom the information was received. Notwithstanding the above, a lawyer counselling another lawyer has an ethical obligation to report to the Society upon learning that the lawyer being assisted is engaging in or may in the future engage in serious misconduct or in criminal activity related to the lawyer's practice. The Society cannot countenance such conduct regardless of a lawyer's attempts at rehabilitation.

THE BAD CHEQUE SCAM (FAKE CERTIFIED CHEQUES AND OTHER NEGOTIABLE INSTRUMENTS)

Scamsters continue to try to trick lawyers into voluntarily paying out funds from their trust account. We have reorganized and expanded the bad cheque scam information in the Fraud Alerts section of the Law Society website to further assist lawyers. Read about how to avoid getting caught and become familiar with the common characteristics, red flags, ruses and twists and developments, and steps you can take to manage the risk. Check out the names and documents page. It includes an alphabetical list of some of the names that fraudsters have used in BC along with the types of ruses they attempted. Please note that real people with the same names may be the victims of fraudsters or of coincidence, but are not suspected of wrongdoing.

Read about what to do if you suspect a new client may be a scamster or discover you've been scammed. Contact Practice Advisor Barbara Buchanan (bbuchanan@lsbc.or) or 604.697.5816 if you would like confidential practice advice in determining if a new matter may be a bad cheque scam that you should report to the police and your bank, or to report any new potential scams and fraudsters. Reporting allows us to notify the profession, as appropriate, and to update the list of names and documents.



These names have been added recently:

- Commercial loan – Brian McKinley
- Commercial invoices (collecting on a phony overdue business debt) – Ronal Fortis, Taro Hagiwara
- Personal loan agreement – Yu Sheng Li
- Phony debt collection in the matrimonial context – Isabella Minor, Tammy Brewer, Tammy Schwartz

VERIFYING THE IDENTITY OF A CLIENT OUTSIDE OF CANADA

In the bad cheque scam scenarios, a new client often initially contacts a lawyer by email and says that he or she resides in another country and, for that reason, cannot meet with the lawyer in person. The client usually emails a scan of a driver's licence or passport hoping that the lawyer will accept the scan for verification of identity. This is not sufficient.

If you can't meet with the potential new client in person, you must enter into a written agreement or arrangement with an agent. The agent must meet with the client in person to verify the client's identity, then send that information to you. You may use your discretion to determine who is an appropriate agent in the circumstances. It may be a lawyer or notary or some other reasonable person. Of course it would be prudent for you to choose the agent yourself rather than relying on suggestions from a potential scamster.

For more information about how to verify the identity of a client outside of Canada, refer to Law Society Rules 3-91 to 3-102 and the Client Identification & Verification Procedure Checklist in the Practice Checklists Manual. The checklist includes, in Appendix II, a sample agreement with an agent for verification of identity and a sample attestation form for the agent's signature. You can also refer to the frequently asked questions in the Client Identification and Verification web page (go to Publications and Resources > Practice Resources on the Law Society website).

COUNTERFEIT LAW FIRM TRUST CHEQUE

A BC lawyer had quite a shock in February to find that someone created a counterfeit trust cheque in the name of his law firm. The cheque was deposited and money was removed from the account initially, but was quickly returned by the financial institution after it learned the cheque was fake. There were a number of discrepancies between the law firm's real trust cheques and the fake cheque. Advice? Keep a close watch on your trust account and your cheques.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604.697.5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch.❖

Practice Watch ... from page 17

additional provisions with regard to clients who are organizations:

> **2.02**(8) A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under subrule (7):
>
> (a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;
>
> (b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and
>
> (c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with Rule 2.07.

RULE 3-51.1 – THE "NO CASH RULE"

A model rule on cash transactions was the Federation's first anti-money laundering initiative, intended to ensure that lawyers were not unwittingly involved in money laundering. It was also intended to avoid government intervention that could threaten solicitor-client privilege and confidentially or the independence of the legal profession. All 14 Canadian law societies adopted cash transaction rules based on the model rule.

The Law Society of BC was the first Canadian law society to adopt a limit on trust funds that lawyers could receive in cash. Rule 3-51.1 — the "no cash rule" — came into effect on May 7, 2004. At that time, the rule prohibited lawyers from receiving $10,000 or more in cash in the course of a single transaction, subject to certain exceptions. The rule was amended in June 2005 to reduce the threshold amount to $7,500, which brought BC into line with the model rule. Rule 3-61.1 requires lawyers to make a detailed record of cash transactions.

Lawyers are encouraged to ensure that they and their staff are familiar with the rules regarding cash and to establish office procedures, including what to do if a client unexpectedly shows up at the office with cash and how to make a refund. Rule 3-51.1 has been the subject of discipline decisions.

RULES 3-91 TO 3-102 – CLIENT IDENTIFICATION AND VERIFICATION

The Federation's second anti-money laundering initiative was the model rule on client identification and verification. These rules are now in force in all Canadian provinces and territories.

The Law Society of BC's client identification and verification rules (Rules 3-91 to 3-102) are designed to codify the steps that prudent lawyers must take in the normal course to identify and verify the identity of their clients. Lawyers are required to comply with the rules on all new matters commenced on or after December 31, 2008, regardless of whether the client is an existing or new client.

Wide definition of "client" and "financial transaction"

With few exceptions, lawyers must take reasonable steps to identify their clients (Rule 3-93). Lawyers are encouraged to pay close attention to all of the definitions in Rule 3-91. It's important to note that there is a wider definition of "client" in these rules than in common usage. Rule 3-91 provides that a "client" includes another party that the lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer. Further, in Rules 3-95 to 3-98, an individual who instructs a lawyer on behalf of a client in relation to a "financial transaction" is also included as a client.

A "financial transaction" means the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money (Rule 3-91). It's important to understand that a financial transaction can take place without money being deposited to a trust account. If there is a financial transaction, and no exception applies, a lawyer must take reasonable steps to verify the client's identity, even if no money is deposited in trust.

"Identification" and "verification" are different

Identification and verification of identity are two distinct steps. "Identification" refers to the basic information that lawyers need to get from clients to establish their identity (Rule 3-93). This is simple and may be accomplished by telephone and email. "Verification" refers to the information that lawyers need to confirm that their clients are who they say they are (Rule 3-95). *This requires physically meeting with an individual to verify his or her identity.* Verification of identity is required, with few exceptions, when a "financial transaction" exists.

When a lawyer acts for a client that is an "organization," not only must the lawyer make reasonable efforts to obtain information about the organization, the lawyer also must obtain information about the individual instructing the lawyer on behalf of the organization. If there is a "financial transaction," the lawyer must take reasonable steps not only to verify the organization's identity, but to verify the individual instructing the lawyer on behalf of the organization.

Rule 3-97 applies when a lawyer provides legal services in respect of a financial transaction for a client who is an individual not physically present before the lawyer. If the lawyer cannot physically meet with the individual to verify his or her identity, another qualified person must physically meet with the individual to do so. If the client is in Canada, the lawyer must obtain an attestation from a commissioner of oaths for a jurisdiction in Canada, or a guarantor engaged in one of the permitted occupations in Canada listed in Rule 3-97(4). The lawyer's responsibilities may be fulfilled by other members of the lawyer's firm in any Canadian jurisdiction.



If the client is outside of Canada, the lawyer must retain an agent to physically meet with an individual to verify identity. There must be a written agreement or arrangement between the lawyer and the agent (Rule 3-97(5) and (6)). It is not sufficient for a client to send the lawyer by fax or email a scan of the individual's passport, driver's licence or other form of identification.

The timing of verification is important. The lawyer must verify the identity of an individual, including an individual who is giving instructions on behalf of an organization, at the time the lawyer provides legal services in respect of the financial transaction (Rule 3-98). Explaining this requirement to a potential new client outside of Canada who may be a fraudster may be enough to make them quickly disappear.

In the case of an organization, verification must be completed within 60 days of engaging in the financial transaction (Rule 3-99); however, as explained above, verification of the identity of the individual who gives instructions on behalf of the organization must take place earlier.

A detailed Client Identification and Verification Procedure Checklist is available in the *Practice Checklists Manual*.

Withdrawal

If, in the course of obtaining client identification or verification information, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client (Rule 3-102). This is consistent with the provisions of Rule 6, Chapter 4 of the *Professional Conduct Handbook* and Rules 2.02(7) and (8) of the upcoming BC Code.

Record keeping and retention

All documents obtained to identify and verify the identity of any individual or organization must be retained as long as the lawyer acts for the client and for at least six years following completion of the work (Rule 3-100).

Practice tips

Following the ethical guidelines, the no cash rule and the client identification and verification rules can help keep lawyers safe from being taken advantage of by dishonest individuals. Some other steps that may assist lawyers include:

- modifying file opening procedures to include a requirement to comply with the cash transaction rules and the client identification and verification rules (the "rules");
- using a client identification and verification procedure checklist. If there will be a "financial transaction," lawyers should consider at the beginning of the retainer who will physically meet with the client to verify their identity. This is particularly important if the client is present elsewhere in Canada or outside of Canada. Lawyers should plan ahead to determine who can act as an agent outside of Canada;
- being cautious about anyone who contacts them via the Internet. They should ask why they chose them. Does it make sense that a stranger from England, Hong Kong, Japan or the U.S. would use them to collect money for a loan gone bad, for money outstanding on a collaborative divorce agreement, unpaid invoices, or act on a conveyance?
- using independent resources (e.g. reverse telephone directories) to cross-check names, addresses and telephone numbers to confirm information provided to them;
- providing information about the rules to new and existing clients in retainer letters and on the law firm website;
- modifying trust accounting procedures to require confirmation of rule compliance before paying funds out of trust;
- keeping a close watch on their trust account and understanding the law firm's financial institution's policies and procedures. Before paying out on a negotiable instrument, lawyers should ask their financial institutions to confirm that the funds have cleared. Certifying the cheque is another option. If lawyers receive funds by electronic transfer, they should determine whether the transfer occurred via an irrevocable deposit or a revocable deposit;
- appointing someone in the law firm to ensure that lawyers and relevant staff keep up to date with Law Society rule changes, fraud alerts and practice advice. They should familiarize themselves with the common scams that target lawyers;
- contacting a Law Society practice advisor for confidential ethics advice.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604.697.5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in Practice Watch.❖

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

More on client ID and verification and "no cash"



HOW ARE YOU making out with the client identification and verification and "no cash" rules? I have spoken to many groups about the rules, most recently the Chilliwack District Bar Association in May; however, in most cases I speak to individual lawyers on a one-on-one confidential basis. Please give me a call if you have questions and I will be happy to assist you.

Rule implementation systems

You may have already implemented systems that take the new rules into consideration or are in the process of doing so. Some tools and procedures to help you implement the rules in your practice may include:

- Provide information about the rules to new and existing clients in retainer letters, on your firm website, and in mail inserts with your accounts.
- Inform your staff about the "no-cash" rules and what to do if a client unexpectedly shows up at the office with cash.
- Modify your file opening procedures to include a requirement to comply with the rules.
- Modify your trust accounting procedures to require confirmation of rule compliance before paying money out of trust.
- Use a client identification and verification rule checklist.
- Appoint someone in your firm to ensure that you, other members of your firm and relevant support staff keep up to date with Law Society rule changes.
- Designate a firm privacy officer who is responsible for ensuring that you and your firm comply with privacy legislation.
- Consider whether you need to make any changes to your current policies and procedures to safeguard the confidentiality of client information.
- Plan ahead to determine who can act as your agent to obtain the information required to verify the identity of clients in jurisdictions outside of Canada.
- Record any exemption from identification or verification upon which you rely by placing a memo in the client file.
- Implement a system whereby you can easily retrieve previously collected identity and verification information about your client.
- Create a list of online resources that may assist you in quickly locating helpful information related to the rules. (For example, to obtain information about Financial Action Task Force member countries, click on www.fatf-gafi.org).

Frequently asked questions

The FAQs are but one of the resources on the Law Society website to assist lawyers and law firms understand and follow the new client identification and verification rules. See the website for more Q and As and watch for updates. Below are some questions and answers I have recently provided:

Q. Does a lawyer only have to verify a client's identity when money goes through his or her trust account?

A. You are required to verify a client's identity in circumstances where you do not use your trust account as well as in circumstances where you do use it. For example, a "financial transaction" may exist in circumstances where you give instructions on behalf of a client in respect of the receipt, payment or transfer of "money" without the "money" being deposited into your account. To determine your obligations, you must consider the meaning of the defined terms "financial transaction" and "money" in Rule 3-91(1).

Q. If I provide pro bono summary legal advice to a client that does not involve a "financial transaction," do I have to identify the client?

A. No. If you provide pro bono summary legal advice that does not involve a "financial transaction" (as defined in Rule 3-91(1)), you do not have to identify the client (Rule 3-92(2)).

Q. If I provide summary legal advice to a client that does not involve a "financial transaction" but I charge a fee for my services, do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide an exemption. You must make reasonable efforts to identify the client (Rule 3-93(1)).

Q. If I provide pro bono summary legal advice to a client that involves a "financial transaction," do I have to identify the client?

A. Yes. Rule 3-92(2) does not provide

an exemption. Rule 3-93(1) requires you to make reasonable efforts to identify the client. You must also take reasonable steps to verify the client's identity unless there is an exemption that applies (Rules 3-94 and 3-95).

BC LAWYERS TARGETED IN NEW FRAUD SCHEME — INCORPORATION AND SMALL BUSINESS LOAN

Be on the look-out for a new counterfeit cheque and bank draft scam that originally surfaced in Ontario, a variation of which has now shown up in BC. This scam involves incorporating a new company or companies and, shortly after, acting in relation to a small business loan.

While the details may vary, the scam works something like this. A new client retains a lawyer to incorporate one or more companies. The client may present a driver's licence and other identification (all well-made fakes) and a working cellphone number. The residential and business addresses (fake) are the same.

A short time later, the client asks the lawyer to act with respect to a small business loan. The client shows the lawyer brochures and invoices related to equipment or inventory that he will purchase with the loan proceeds. The client wants the loan completed quickly, often just before a holiday when the lawyer may be rushed or short-staffed. He instructs the lawyer to send the proceeds to a third-party corporation, not the client's new company. The only security is a promissory note or a general security agreement.

The lawyer receives the loan proceeds in the form of a well-made fake certified cheque or bank draft. The lawyer deposits the fake instrument into the law firm's trust account. The lawyer writes a cheque or wires the funds to the third-party corporation, only later to find out that the certified cheque or bank draft was counterfeit.

For details on how to protect yourself, consult the Notice to the Profession issued May 14, 2009.

ABOUT TO ACT FOR YOURSELF? THINK TWICE!

I have recently received a flurry of calls with respect to lawyers acting for themselves. I discourage this for some of the same reasons that I discourage lawyers from acting for family members, e.g. a loss of objectivity, acting outside of one's area of expertise, and no insurance.

Keep in mind that the *Professional Conduct Handbook* rules apply to a lawyer acting on his or her own behalf and the lawyer must not engage in conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice. This may sound straightforward, but it becomes much more challenging if the lawyer has a personal interest in the matter at issue.

For example, a lawyer acting for him or herself may be tempted to communicate directly with the other party. If the other party is represented by counsel, the lawyer must not communicate with the other party regarding the matter, except through or with the consent of that party's lawyer. Likewise, what might be treated as a simple and perhaps inadvertent misstatement by a lay party in court might, when made by a self-representing lawyer, be seen as running afoul of that lawyer's ethical obligations to the court, and in the worst case might even attract disciplinary consequences.

For more information about the risks of acting for family and friends see the July 2005 *Insurance Issues: Risk Management*.

HEALTH CARE COSTS RECOVERY ACT IMPACTS PERSONAL INJURY CLAIMS

The Law Society issued a Notice to the Profession on April 14, 2009 about the *Health Care Costs Recovery Act*, SBC 2008, c.27 and *Health Care Costs Recovery Regulation* (BC Regulation 397/2008) that came into force on April 1, 2009.

Since then, I have received telephone calls from lawyers wanting more information. According to the provincial government's Third Party Liability web page, the Act "allows the Ministry of Health Services to recover all health care costs paid by government related to a beneficiary's injury that was caused by the wrongful act of a third party." There are obligations on plaintiffs, defendants and some insurers.

Be aware that the Act contains notice provisions that may affect settlements for personal injury or death, including those where a legal proceeding has not been filed or was filed prior to April 1, 2009. The notice requirements are in ss. 4, 5, 10, 12 and 13. Section 13(5) provides for a penalty for failing to give notice. Sections 4, 10, 12 and 13 require notice to be in a prescribed form. Links to PDF versions of the forms are on the government website. Section 24 sets out exclusions to the legislation (such as a wrongdoer's use and operation of a motor vehicle where ICBC insures the defendants and personal injury claims covered by the *Workers Compensation Act*).

Lawyers can read the *Health Care Costs Recovery Act* and associated regulations online at bclaws.ca. For further information or assistance, contact Barbara Carmichael, Legal Services Branch, Ministry of the Attorney General at 250-356-8817 or Barbara.carmichael@gov.bc.ca.

FURTHER INFORMATION

Contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in *Practice Watch*.❖

Notice from the Provincial Court

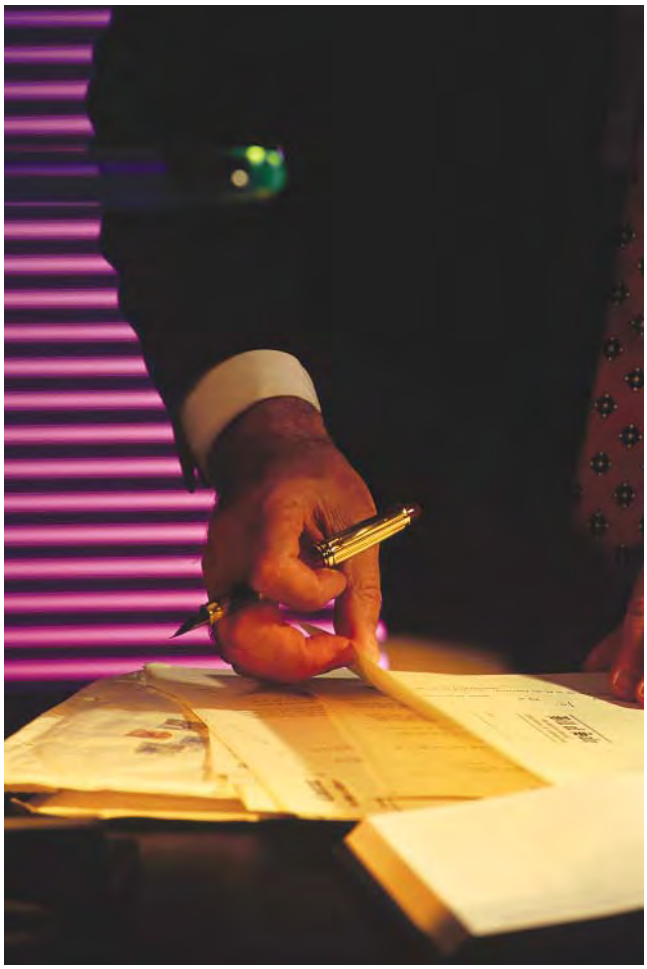
THE *TSAWWASSEN FIRST Nation Final Agreement Act*, S.C. 2008, c. 32, and S.B.C. 2007, c. 39 came into force April 3, 2009. The *TFN Act* implements the "Final Agreement" reached between the Tsawwassen First Nation, Her Majesty the Queen in Right of Canada and Her Majesty the Queen in Right of British Columbia.

The Final Agreement vests in the Tsawwassen First Nation the jurisdiction to make laws regarding a number of subject areas described in the Final Agreement. One term of the Final Agreement is to provide that the Provincial Court of British Columbia is the forum within which prosecutions of particular offences under Tsawwassen Law will be heard.

See the court's website at provincialcourt.bc.ca for the complete text of the practice direction.❖

PRACTICE WATCH, by Barbara Buchanan, Practice Advisor

Client identification and verification



TO HELP LAWYERS and law firms better understand and follow the client identification and verification rules, resources are available on the Law Society website, including:

- frequently asked questions (FAQs);
- a client identification and verification checklist; and
- a free online course.

Note that the FAQs and the checklist have been updated to reflect rule changes. Also, the FAQs have been expanded to provide more information. I anticipate adding further questions and answers from time to time. One question I am frequently asked is set out below. See the website for more questions and answers.

Q. I sometimes commission or notarize a document for someone but do not give any legal advice. I usually charge for this service. Do I have to identify the person?

A. No. Simply commissioning or notarizing a document does not trigger the obligations under Rule 3-93. If you are retained to provide legal advice or other representation, the rule applies. However, note footnote 3 of Appendix 1 of the *Professional Conduct Handbook*, which states:

> The commissioner should be satisfied that the deponent is who the deponent represents himself or herself to be. Where the commissioner does not know the deponent personally, identification should be inspected and/or appropriate introductions should be obtained.

NEW LOTTERY SCAM

A new lottery scam using the "BC 6/49" jackpot name has surfaced in British Columbia. The scamster uses the names of two real BC law firms (or a law firm and a notary), fake law firm letterhead, a fake law firm trust cheque and a fake lottery win.

How the scam works

An individual in the United States receives a letter written on fake law firm letterhead telling them that they have won a BC lottery (e.g. $279,000). The law firm is real but the contact information is altered.

A fake trust cheque drawn on a Canadian bank in a second law firm's name is enclosed. The letter says the trust cheque represents an advance payment in US dollars (e.g. $7,980). The second law firm's name is real and its trust account numbers are correct. If the cheque is cashed without the financial institution realizing it is a fake, the money would come out of the second firm's account.

The letter also says that the firm has been requested to prepare some documents (e.g. tax forms) prior to the release of the funds. The lump sum payout is to commence once the documents are filed. The "winner" is informed that they must pay processing fees, legal fees, an insurance premium and federal taxes (the projected amount exceeds the amount of the advance).

The winner is given telephone numbers (cellphone numbers) to call immediately and told that failure to comply will result in forfeiting the prize.

At this point, the BC firms whose names were used in this scam have not lost trust money. They contacted the police and their banks and have taken steps to protect their accounts.

What can you do?

Some steps that you may consider to help protect yourself:

1. Check your trust account frequently. Online banking makes it simple to be informed.
2. Talk with your financial institution's representative about what cash management services they offer. For example, consider whether an automated cheque matching service would work for your firm. You would electronically provide your institution with a daily list of all items drawn on your account. The financial institution would then cross-reference the information you provided to the paid items and items that are not contained in your list. You would receive an exception report alerting you to possible fraudulent items presented for payment, and would issue instructions to either pay or not pay the items.

   In some cases institutions automatically pay an exception item if they

do not hear from you within a limited time period so you have to be prepared to issue instructions quickly.

3. Alert your staff to be on the look-out for unusual telephone calls, emails and faxes and to be cautious about giving out your trust account information.
4. Try to limit the use of your signature to instances where it will not be widely published. Consider using initials for correspondence. Save your formal signature for formal documents (e.g. banking documents).
5. Where possible, limit the use of your signature on faxed documents. If you have a signature stamp, consider destroying it to protect against the unauthorized use of your signature.
6. Use of an electronic signature on emails is not recommended. Where possible, avoid publishing your signature on web pages or documents that are publicly available. This would reduce the chance that someone will copy it and apply it where you do not want it.
7. Google your name and firm's name to see if anyone else is using them. The Google Alert feature helps to send you this information automatically.

Two Canadian websites that you might view to inform yourself about scams are **fraudcast.ca** and **phonebusters.com**, the Canadian Anti-fraud Call Centre. PhoneBusters (a form of partnership between the Ontario Provincial Police, the RCMP and the Competition Bureau) identifies new trends in scams, gathers evidence and alerts law enforcement officials both inside and outside of Canada.

If a fraudster has attempted to scam you, report it to the RCMP or your municipal police force and the Law Society. You can ask the police to report the matter to PhoneBusters or you can do it yourself (call 1-888-495-8501).

FAKE INVOICES ISSUED TO LAW FIRMS

Some law firms have reported receiving invoices for services or products that they did not order. The amounts are generally for odd amounts, less than $100. Advise your accounting staff to be alert for this scam.

CIVILITY IN THE COURTHOUSE

It has come to the Law Society's attention that there have been instances of lawyers losing their temper in the courthouse, sometimes using profanity and abusive language. Undignified and discourteous behaviour reflects badly, not only on the individual lawyer, but on the profession generally. The Law Society takes rudeness complaints seriously.

Rule 1 of Chapter 3 of the *Professional Conduct Handbook* states:

> A lawyer must not, in private life, extra-professional activities or professional practice, engage in dishonourable or questionable conduct that casts doubt on the lawyer's professional integrity or competence, or reflects adversely on the integrity of the legal profession or the administration of justice.

We all have times when we are stressed and frustrated, and on some days it is easier to cope than on others. Let us all take pride in how we publicly conduct ourselves under stress and be courteous even in difficult circumstances.

Whether in the library, the hallways, the registry, the courtroom or elsewhere, lawyers should conduct themselves in a courteous and civil manner.

We all have times when we are stressed and frustrated, and on some days it is easier to cope than on others. Let us all take pride in how we publicly conduct ourselves under stress and be courteous even in difficult circumstances.

FURTHER INFORMATION

You are welcome to contact Practice Advisor Barbara Buchanan at 604-697-5816 or bbuchanan@lsbc.org for confidential advice or more information regarding any items in *Practice Watch*.❖

Services for members

Practice and ethics advisors

Practice management advice – Contact **David J. (Dave) Bilinsky**, Practice Management Advisor, to discuss practice management issues, with an emphasis on technology, strategic planning, finance, productivity and career satisfaction. Email: daveb@lsbc.org Tel: 604-605-5331 or 1-800-903-5300.

Practice and ethics advice – Contact **Barbara Buchanan**, Practice Advisor, Conduct & Ethics, to discuss professional conduct issues in practice, including questions on undertakings, confidentiality and privilege, conflicts, courtroom and tribunal conduct and responsibility, withdrawal, solicitors' liens, client relationships and lawyer-lawyer relationships. Tel: 604-697-5816 or 1-800-903-5300 Email: advisor@lsbc.org.

Ethics advice – Contact **Jack Olsen**, staff lawyer for the Ethics Committee to discuss ethical issues, interpretation of the *Professional Conduct Hand*book or matters for referral to the committee. Tel: 604-443-5711 or 1-800-903-5300 Email: jolsen@lsbc.org.

All communications with Law Society practice and ethics advisors are strictly confidential, except in cases of trust fund shortages.

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Interlock Member Assistance Program – Confidential counselling and referral services by professional counsellors on a wide range of personal, family and work-related concerns. Services are funded by, but completely independent of, the Law Society and provided at no cost to individual BC lawyers and articled students and their immediate families. Tel: 604-431-8200 or 1-800-663-9099.

◆

Lawyers Assistance Program (LAP) – Confidential peer support, counselling, referrals and interventions for lawyers, their families, support staff and articled students suffering from alcohol or chemical dependencies, stress, depression or other personal problems. Based on the concept of "lawyers helping lawyers," LAP's services are funded by, but completely independent of, the Law Society and provided at no cost to individual lawyers. Tel: 604-685-2171 or 1-888-685-2171.

◆

Equity Ombudsperson – Confidential assistance with the resolution of harassment and discrimination concerns of lawyers, articled students, articling applicants and staff in law firms or other legal workplaces. Contact Equity Ombudsperson, **Anne Bhanu Chopra**: Tel: 604-687-2344 Email: achopra1@novuscom.net.

Fraud Alert: December 15, 2008

Attention real estate practitioners: A variation on the bad cheque scam

December 15, 2008

As you know, many scams are making the rounds and some of them involve fraudulent certified cheques and bank drafts in the real estate context. The Law Society has learned about a new variation of real estate scam that was attempted in another province. The basic scheme works similar to this:

- Residential property is for sale by the registered owner and a realtor is involved.
- A Canadian lawyer is contacted by telephone to act for a purchaser.
- The purchaser is from outside of Canada.
- The lawyer meets in person with an individual acting on the purchaser's behalf (e.g. a relative with a power of attorney).
- The lawyer receives a certified cheque for the purchase amount.
- The lawyer deposits the cheque into trust.
- The relative advises the lawyer that the purchaser has passed away and the relative requests that lawyer to quickly return the funds (e.g. by wire transfer).
- The lawyer transfers the funds to the relative before learning that the certified cheque is fraudulent.

How can you protect yourself?

This scenario should make you suspicious. When you are suspicious, trust your judgment. Do not pay out hastily when it's not necessary. Just because a client is anxious to get their money does not mean that the pay-out must be right away. Contact your bank to verify a cheque's authenticity and to confirm that the funds have cleared. This reduces the risk, but may not eliminate the risk completely.

As of December 31, 2008, lawyers are required to comply with the new client identification and verification rules. When a lawyer provides legal services in respect of a financial transaction (as defined in Rule 3-91), including a non-face-to-face transaction, the lawyer must take reasonable steps to verify the identity of the client using what the lawyer reasonably considers to be reliable, independent source documents, data or information. "Client" (as defined in Rule 3-91) includes another party that a lawyer's client represents or on whose behalf the client otherwise acts in relation to obtaining legal services from the lawyer.

The lawyer must verify the identity of both the attorney and the principal/donor. Since the principal is not in Canada, the lawyer must use an agent to verify the individual's identity. The lawyer must enter into a written agreement or arrangement with the agent to obtain the required information and attest to the individual's identity (Rule 3-97).

Taking the above steps will give you some protection but there is more that you can do to protect yourself. See the Law Society's website for more tips and information on counterfeit scams, and stay tuned for updates in Practice Watch. A list of Law Society publications on these scams is available on the website at Regulation & Insurance/Risk Management/Fraud prevention.

If you think that you have been contacted by a fraudster or would like to discuss how to apply the client identification and verification rules, you are welcome to contact Barbara Buchanan, Practice Advisor, Conduct & Ethics, at 604 697 5816 or bbuchanan@lsbc.org.

Benchers adopt client identification and verification rules

ON NOVEMBER 14, the Benchers adopted new client identification and verification Rules (Rules 3-91 to 3-102) based on the Federation of Law Societies of Canada's Model Rule. At the next meeting on December 12, the Benchers amended Rules 3-91 to 3-95 and Rule 97, based on revisions to the Model Rule. Law Society Rules 3-91 to 3-102 (including the December amendments), will take effect December 31, 2008.

The Law Society of BC Rules, which were developed by the Act and Rules Subcommittee of the Executive Committee of the Benchers are consistent with the Federation Model Rule. The Rules are designed to codify the steps prudent lawyers take in the normal course to identify their clients.

After circulating draft Rules to Law Society members in July, the Act and Rules Subcommittee recommended several changes, which were adopted by the Benchers in November and December, including:

- Duty counsel for non-profits and lawyers providing pro bono summary advice are excluded from the Rules, provided that the circumstances do not involve a "financial transaction" (a defined term);
- In-house counsel are not subject to the Rules when acting in the course of their employment;
- If a lawyer has completed the identification and verification requirements and refers the client to another lawyer, further client identification and verification will not be required by the second lawyer;
- The responsibilities of a lawyer may be fulfilled by the lawyer's firm, including members or employees of the firm conducting business in another Canadian jurisdiction;
- The principle of reasonable efforts has been extended to client identification as well as verification;
- The exemption from verification requirements when a lawyer "pays money to another lawyer in trust, on the direction of the client" was deleted.
- An exemption for electronic funds transfers will apply, provided the transfer is conducted at both ends by institutions in Canada or other Financial Action Task Force countries and neither the sender nor the beneficial receiver of the funds handle or transfer the funds;
- The defined term "reporting issuer" has replaced the term and definition of "public company";
- Verification requirements will not apply if the client is a "financial institution", "public authority" or "reporting issuer".

Members are asked to read the Rules carefully, paying close attention to the definitions — terms such as "client," "financial transaction", "interjurisdictional lawyer" and "reporting issuer" may not be consistent with common usage.

The text of the Rules as adopted by the Benchers in November and amended in December is available for viewing on the Law Society website (lawsociety.bc.ca). Copies of the Rules adopted in November are included in the Member's Manual amendment package as part of this mailing. The December amendments will be circulated at the earliest opportunity.

To help lawyers and law firms better understand and follow the Rules, resources are available on the Law Society website:

- frequently-asked questions;
- a new client identification practice checklist;
- a free online course.

For further information about the new Rules or the online course, contact Barbara Buchanan, Practice Advisor at 604-697-5816 or bbuchanan@lsbc.org. ❖

Client identification vs. verification

Identification and *verification* are two distinct concepts. The client *identification* requirements apply when a lawyer is retained by a client to provide legal services. These requirements call for obtaining basic identification information about individual clients or organizational clients in every retainer, subject to certain exceptions.

The identity *verification* requirements are triggered when a lawyer receives, pays or transfers funds on behalf of a client or gives instructions for such activities on behalf of a client. A number of exceptions are included. For example, the verification requirements do not apply when a lawyer pays money to or receives money from a "financial institution," "public authority," or "reporting issuer" (all defined in Rule 3-91), or receives money from the trust account of another lawyer.

View the free online course

The Law Society partnered with the Continuing Legal Education Society of British Columbia to deliver a free on-line course on December 11, 2008 to help lawyers better understand the client identification and verification rules.

The course was interactive and featured videos and examples about implementing the rules in a lawyer's practice. Lawyers can now view this course at any time via the Law Society website at lawsociety.bc.ca.

New strata assignment requirements effective January 1, 2019

Lawyers acting for developers should become familiar with new disclosure, reporting and document retention requirements for assignments of new and pre-existing strata purchase agreements. Developers who do not comply may face marketing restrictions and significant fines or penalties (first offence up to $1.25 million, subsequent offences up to $2.5 million, and significant administrative penalties). See Policy Statement 16, Information Bulletin and creation of a Condo and Strata Assignment Integrity Register for more information.

New property transfer tax return requirements in effect September 17, 2018

News

President's Blog

Benchers' Bulletin

E-Brief

NOTICE TO THE PROFESSION

September 07, 2018

Lawyers who are completing property transfers need to become familiar with the new property transfer tax return (version 31) that takes effect on September 17, 2018. As of that date, the new PTT return will require information on all beneficiaries of certain trusts and corporate interest holders, including their name, contact information, tax identifiers (SIN, ITN, BN) and citizenship. **You will need to plan for time to obtain this information before your transactions close to avoid potential issues on closing.**

The new PTT return is now available for download on the Land Title and Survey Authority of British Columbia (LTSA) website. It is also available through the Electronic Filing System (EFS) in the myLTSA portal; read more here. For more information on the regulation, including exclusions, read the Information Collection Regulation.

The Ministry of Finance, Property Taxation Branch will host two webinars on September 11, 2018 highlighting the changes to the new PTT return. The webinar details are here.

For questions, contact the Property Taxation Branch at PTTEnq@gov.bc.ca or 1.888.355.2700.

Law Society protects against money laundering

News

President's Blog

Benchers' Bulletin

E-Brief

David Crossin, QC

September 19, 2016

Last week an international task force report called on the Canadian government to tighten Canada's money-laundering rules. Among other things, the report cites the legal profession's exemption from requirements of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act as a concern.

Law societies across Canada supported litigation that succeeded in establishing that the Act's requirement to report suspicious transactions to a federal agency violated their clients' rights. The Supreme Court of Canada ruled that collecting information about clients and their financial transactions and turning that information over to the Financial Transactions and Reports Analysis Centre of Canada (FINTRAC) violated provisions of the Canadian Charter of Rights and Freedoms.

In its decision, the Supreme Court observed:

> The information gathering and record retention provisions of [the law societies' rules] serve important public purposes. They help to ensure that lawyers take significant steps so that when they act as financial intermediaries, they are not assisting

> money laundering or terrorist financing. The scheme also serves the purpose of requiring lawyers to be able to demonstrate to the competent authorities that this is the case.

The Law Society of British Columbia introduced a no-cash rule in 2004, which prohibits lawyers, except in very limited circumstances, from receiving $7,500 or more in cash from a client. The federal anti-money-laundering legislation, by comparison, does not prohibit cash being accepted by professionals but requires those who accept $10,000 or more in cash to report the transaction to FINTRAC. Our rule is specifically limited to the amount of cash a lawyer can accept because any amount a lawyer receives by way of cheque or electronic transfer will have been subjected to the FINTRAC-reporting requirements at the point of deposit with a financial institution.

In 2008 the Law Society introduced client identification and verification rules similar in scope to those of the federal Act, but without the requirement to report to FINTRAC. A lawyer must verify not only an individual's full name, address and phone number, but also the client's occupation. If the client is an organization, the lawyer must obtain and keep a record of the general nature of the type of business it engages in, and the name, position and contact information of individuals from whom the lawyer will be receiving instructions. There are limited

exceptions, largely pertaining to public institutions for which such information is a matter of public record.

The rules are enforced by a compliance audit program, introduced in 2006, that requires regular, periodic audits of the trust accounts of all law firms.

Our profession takes its role in combatting money laundering and terrorist financing seriously. If we receive information or evidence of a lawyer engaged in activity that has any indication of money laundering, or that a lawyer is not complying with Law Society rules that protect against money laundering, we will promptly and thoroughly investigate that lawyer's conduct.



President's View

Why we won't let down our guard on money laundering

by Robert W. McDiarmid, QC

A recent issue of the *Calgary Herald* contained a small article quoting a federal Department of Finance briefing note that pushed for more stringent anti-money-laundering legislation to combat terrorism.

Is it just me, or do others find it strange that the impetus for Canada's legislation, or changes to it, comes from the Finance Department? If the object is truly fighting crime, wouldn't it make more sense for these initiatives to come from the Department of Justice?

There is no doubt about the need for strong legislation to tackle serious crime. Terrorist attacks are horrid. Organized crime undoubtedly affects the well-being of our populace. But the point of a free and democratic society is to enhance freedom and democracy. For that reason, measures to combat terrorism and organized crime should be implemented by the Minister of Justice, following consultation with the legal profession to ensure measures designed to fight these activities only go as far as necessary.

I have some concerns that current laws on money laundering, overseen by Financial Transactions and Reports Analysis Centre of Canada (FINTRAC), could well be an excuse for revenue-hunting expeditions that have nothing to do with crime or terrorism. This was underscored for me at a Federation of Law Societies of Canada meeting in Ottawa last fall when we heard about some police examples of proceeds of crime matters that actually seemed to be tax enforcement cases. If that's so, it should concern members of the public. It should also concern lawyers who are entitled to give clients advice on legitimate tax avoidance.

Let me turn to the central issue for the Law Society. As you know, the Law Society, together with the Federation of Law Societies of Canada, challenged the constitutionality of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its requirement for lawyers to disclose privileged communications of clients. So far, our challenge to this legislation has been successful. Starting in BC, the courts in Canada began exempting lawyers from the legislation until the constitutional issue on solicitor-client privilege could be heard. The federal government agreed to be bound by the exemption. Yet the government is not dissuaded overall from proposing new Orwellian laws that would have the effect of breaching the confidences of our clients.

We have always worked to keep the lines of communication open on this issue. At the Federation of Law Societies meeting I mentioned, the Federation took the initiative to invite representatives from the RCMP who are directing anti-terrorism and anti-money-laundering activities at the highest levels.

We discussed the law society rules that prohibit lawyers from accepting large sums of cash, except in certain very narrowly defined circumstances. (These rules have been passed by all law societies in Canada, not just ours.) The RCMP expressed concerns that our rules would not be effective in preventing lawyers from assisting criminals in money laundering. Asked why, they said they had examples of Canadian lawyers involved in money-laundering — and they provided one or two examples that sounded as if there was a reason to investigate. But when asked whether they had brought complaints to the law societies that have the jurisdiction, the answer was "no." Pressed further, the Superintendent who is the Director of the RCMP Proceeds of Crime Branch, said it was because of loopholes in the "no cash" rule (Rule 3-51.1).

As you know, the no-cash rule prohibits lawyers from receiving an

Benchers' Bulletin

The *Benchers' Bulletin* and related newsletters are published by the Law Society of British Columbia to update BC lawyers and articled students on policy and regulatory decisions of the Benchers, on committee and task force work and on Law Society programs and activities.

The views of the profession on improvements to the *Bulletin* are always welcome — please contact the editor.

Additional subscriptions to Law Society newsletters may be ordered at a cost of $50.00 (plus GST) per year by contacting the subscriptions assistant. To review current and archived issues of the *Bulletin* online, please see "Publications & Forms / Newsletters" at www.lawsociety.bc.ca.

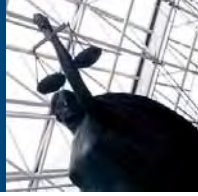
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aggregate amount of cash of $7,500 or more in respect of any one client matter or transaction, with a proviso that a lawyer may accept or receive an amount of $7,500 or more in cash for professional fees, disbursements, expenses or bail, but that any refund greater than $1,000 out of such money must be made in cash.

The Superintendent said that this Rule had a gaping loophole. Many of us at the meeting were perplexed. He said that the loophole was that disbursements were allowed to be paid in cash. We were all wondering how much terrorist financing could occur at the 35-cents-a-page photocopy rate, so we asked for a further explanation. The Superintendent said that, as an example, if a lawyer were handling a purchase of real estate for a client, the purchase price of the real estate (I believe he put it as "the price of the house") would be considered a disbursement. He said this with a straight face, and honestly appeared to believe it! When it was explained that the purchase of real estate would not be considered a disbursement, it wasn't entirely clear that he accepted this explanation.

Beyond this mistaken interpretation of the no-cash rule, what is often overlooked is that the rule is proactive. It *prevents* lawyers from accepting cash because we believe this is the best way to minimize risk. If cash cannot be accepted, it cannot be laundered. This rule is therefore even more stringent that the proceeds of crime legislation, which permits large amounts of cash to be accepted in transactions, provided it is reported to FINTRAC. Because of this, the rule deters dishonest people from attempting to use a lawyer for money laundering.

What became quite clear from the RCMP members attending our meeting, and perhaps it's true of other federal officials, is that they do not have a firm grasp of lawyer regulation. And why should they? That is not their area of expertise. The expertise lies with the law societies. We have an understanding of the practice of law, the commitment to set high standards and the power to enforce them. I think we have a responsibility to say so.

We know the police have a job to do in tackling money laundering. If they do have evidence that a lawyer's client is laundering money, they have a process to seek material from the lawyer, but of course that is properly subject to a court determination of what is protected by solicitor-client privilege. If it appears to police that a lawyer is directly involved, or is in breach of the no-cash rule, the Law Society needs to hear about that to pursue it as a complaint. We'll investigate — and that includes the big files. Need I mention (though it's not a money laundering example) our audit and investigation on Martin Wirick? Or the fact that the RCMP and Vancouver City Police acknowledged our lead in the investigative work in that case? In BC, I should add, we are beefing up our team of auditors and investigators and introducing compliance audits, which will be targeted and effective. The point is, we have a sound track record of fulfilling our responsibilities, and we do it in a way that does not jeopardize the constitutional rights of lawyers' clients.

I recognize that we are sitting opposite the federal government in the proceeds of crime litigation. It still troubles me that this litigation is even necessary. But the federal government continues to propose legislation that affects entrenched principles such as solicitor-client privilege. It is therefore incumbent upon us to be wary and not to be afraid of appearing unpopular in contesting that legislation.

The price of freedom is, after all, eternal vigilance, and lawyers traditionally have been among the most vigilant. We do so, not for ourselves, but for the public who are our clients. Now is not the time to let our guard down.

Ken Dobell appointed new Lay Bencher

Ken Dobell, Chair of the Vancouver Convention Centre Expansion Project, has been appointed a Lay Bencher by the provincial cabinet.

Mr. Dobell comes to the role with an impressive record of service. In addition to his work on the Convention Centre expansion, he is a director of VANOC, the 2010 Legacies Now Society and the Canadian Council for Public-Private Partnerships. He has served as the Deputy Minister to the Premier and Cabinet Secretary (2001-2005), and remains a special advisor to the Premier on a contract basis. From 1999-2001 he was CEO of the Greater Vancouver Transportation Authority. He has also worked for the City of Vancouver as City Manager, Deputy City Manager and a research engineer. He has received a number of awards, including the Lieutenant Governor's Award for Excellence in Public Service, the Municipal Officers of BC Professional Award and the BC HRMA Award of Excellence.

President Rob McDiarmid, QC welcomed Mr. Dobell. "The Society has been fortunate through the years to have had very talented people as Lay Benchers, and Ken Dobell is yet another example," he said. "His experience on public policy issues will undoubtedly be of great value to us."

For his part, Mr. Dobell said he is very pleased for the opportunity to serve and looks forward to working with the other Benchers. In accepting the position, he joins Michael Falkins, Patrick Kelly, June Preston and Maelor Vallance at the table, and fills one of two Lay Bencher vacancies. His term of service runs to December 31, 2007 and is renewable.

Practice advice and education

Staff lawyers in the Law Society's Practice Advice department, practice advisors, provide advice to British Columbia lawyers with respect to lawyers' professional responsibilities under the *Legal Profession Act*, the Law Society Rules and the *Code of Professional Conduct for British Columbia*. Lawyers usually contact practice advisors by phone or email. Practice advisors handle in excess of 5,000 inquiries per year. In addition to giving 1:1 advice to lawyers, practice advisors also develop resources and provide presentations to assist lawyers, and refer lawyers to external resources.

See below for a sample of some of the resources and presentations that have been developed with respect to the client identification and verification rules, no-cash rules, scams that dishonest clients may try to involve lawyers in and scams against lawyers.

Presentations, Barbara Buchanan QC

1. The Law Society of BC's anti-money laundering rules, Business Law Section, CBABC, April 25, 2019
2. Anti-money laundering 2019, CLEBC, April 24, 2019
3. Anti-Money Laundering for Lawyers and Law Firms, Barbara Buchanan QC and Scott Bartos, provided through CLEBC, December 2018
4. Client Identification and Verification, various presentations to Law Society staff including May 2017, February 2016, April 2016
5. The Law Society of BC's client identification and verification rules, free online program provided through the Courthouse Libraries BC series, The Practical Lawyer, November 29, 2016
6. The Bad Cheque Scam and Client ID, Creditor's Remedies, CLEBC, 2012
7. The Bad Cheque Scam and Other Frauds, Barbara Buchanan, Margaret George, Surindar Nijjar, Residential Real Estate Conference, CLEBC, June 2012
8. Anti-money Laundering and Lawyers: Legal and Ethical Obligations, CLEBC May 2011
9. Client Identification & Verification, Criminal Law Seminar, Trial Lawyers Association of BC, September 2010
10. Client Identification & Verification Rules for Lawyers, Personal Information and Protection of Privacy Conference, provided by the Privacy Commissioners of BC and Alberta, October 2009
11. Client Identification and Verification, Chilliwack District Bar Association, May 2009
12. Client Identification and Verification, Abbotsford Bar Association, February 2009
13. Client Identification and Verification, presentation to four Vancouver law firms, February 2009
14. Client Identification and Verification, Solo and Small Firm Conference, January 2009
15. Client Identification and Verification, Wills and Estates Section Meeting, Victoria, BC, January 2009

16. Client Identification and Verification, for Yukon Bar Association
17. The New Client ID and Verification Rules – Barbara Buchanan and Roy Millen, a free online course made available 24 hours per day on the Law Society website by the Law Society and CLEBC, December 2008
18. Client Identification and Verification and No-Cash Rules, Banking Law Section, CBABC, December 2008
19. Client Identification and Verification, Real Estate Conference, December 2008
20. Client Identification and Verification and No-Cash Rules, Making Trusts Work, CLEBE, November 2008
21. Client Identification and Verification and Cash Transactions, Canadian Paralegal Conference, October 2008
22. Money Laundering and Proceeds of Crime,– Continuing Legal Education of BC program initiated, developed and co-chaired by Barbara Buchanan, Practice Advisor, September 2007

Resources

Client identification and verification procedure checklist, free online, created in 2008 and updated yearly

Client ID and Verification, Frequently asked questions

Client identification and verification rules in force, by Barbara Buchanan, February 2009, published in BarTalk, a Canadian Bar Association (BC Branch) magazine

Benchers' Bulletins, Barbara Buchanan, QC, advice columns	
Date	**Column Description**
Winter 2018	Recent scam attempts against BC lawyers; Client ID and verification resources; bank holds on trust cheques, certified cheques and bank drafts.
Summer 2018	Scams against lawyers persist – What are they and what can you do about them; Caution about witnessing non-sensical documents
Winter 2017	What documents to keep and for how long
Fall 2017	Limited scope retainer FAQS – What BC Code rules apply when acting on a limited scope retainer
Spring 2017	Client ID and verification – resources and audits; Beware of a change in payment instructions and "phishing"; Funds that are fiduciary property; What to do if your laptop or briefcase is stolen
Winter 2016	Practice Advisors – Frequently Asked Questions
Fall 2016	Scams against lawyers – What are they and what can you do about them
Summer 2016	Practice Advisors – Frequently Asked Questions

Spring 2016	Sending items or correspondence received from third parties to clients in correctional facilities
Fall 2015	Client identification and verification – 2014 updates and scams
Summer 2015	Help thwart scams – follow the client ID rules and beware of changes to payment instructions
Spring 2015	Follow the client identification and verification rules to prevent scam attempts
Winter 2014	Cash transactions and records; what additional record-keeping is required when a lawyer accepts cash; Is any special record-keeping required when a lawyer withdraws cash from a trust account; How long must a lawyer keep cash transaction records; How much cash may a lawyer accept; When does the prohibition against accepting an aggregate amount of $7,500 or more apply; can a lawyer refuse to accept cash; If there is money left over from a cash retainer when the lawyer's services end, should a lawyer issue a refund in cash or by trust cheque; Are there any other Law Society resources pertaining to cash transactions; Guide to detecting money laundering; Closed File Records – Retention, Storage and Destruction; How long is a lawyer required to keep records? What are "records"; Are there rules about storing records outside of the law office; What should a lawyer do if the security of records has been compromised; Incorporating a company for a new client outside of BC? Beware of new scam
Fall 2014	Improper to give anonymous advice for a fee; Scam attempt against lawyers abound
Summer 2014	Scam attempts against BC lawyers continue
Spring 2014	Phony referrals and other scams
Winter 2013	Bad cheque scam attempts using linked-in; Fraudsters may impersonate you – search your name on-line
Fall 2013	Lawyer caught in bad cheque scam
Summer 2013	New variations on the bad cheque scam – mergers, surety bond services
Winter 2012	Identity fraud; identity fraud – Alberta loan on Alberta land
Fall 2012	What's new in scams against BC lawyers? Keep non-lawyer staff informed – free electronic subscriptions to law society publications
Summer 2012	Scam alerts; The Little Black Book of Scams; fake websites and lawyers; reporting scams to the Canadian Anti-Fraud Centre; Reporting scams to the Law Society
Spring 2012	Practice checklists, new BC Code, scams, client ID and counterfeit cheques; the bad cheque scam - fake certified cheques and other negotiable instruments; verifying the identity of a client outside of Canada, counterfeit law firm trust cheque
Winter 2011	Scams; Fake law firm website using BC lawyer's website content; more bad cheque scams; personal loan agreement scam; Keep informed and learn to recognize scams; Holidays coming – scamsters looking to line their pockets with your hard-earned cash

Fall 2011	Bad cheque scams – new twists; commercial loan agreement scam; Can you disclose information about a fraudster if you've been duped? Positive development in the fight against debt collection scams
Summer 2011	Don't be taken advantage of by dishonest clients – ethical guidelines and rules; The *Annotated Professional Conduct Handbook*; *Code of Professional Conduct for British Columbia,* Rule 3-51.1 – The "No Cash Rule"; Rules 3-91 to 3-102 – Client Identification and Verification
Spring 2011	Registering with Juricert and obtaining a digital signing certificate; an office for your assistant to affix your digital signature
Fall 2010	Are you an easy target for fraudsters? Fictitious lawyers and other twists to the phony debt collection scams; Do your systems protect you from employee fraud?
Summer 2010	Not a holiday for fraudsters; the "Oklahoma Flip" – a cautionary tale of property value fraud; phony debt collection scams a plague – new twists
Spring 2010	Matrimonial debt collection scam ubiquitous; retainer overpayment and refund scam
Winter 2009	Changes to cash transaction rule; Schemes and scams – On-line mortgage referral program; matrimonial debt collection, fraudulent investments, insurance risks with uncertified cheques
Fall 2009	Craigslist – scamsters preying on legitimate sellers; new twist on phony debt collection scam
Summer 2009	More on client ID and verification and "no cash"; BC lawyer targeted in new fraud scheme – incorporation and small business loans
April 2009	Client identification and verification, new lottery Scam; fake invoices issued to law firms
December 2008	Client identification and verification, fake certified cheques, bank draft and money orders
October 2008	Client identification and verification help, Checklist, Online course, Frequently Asked Questions, Scams, scams and more scams; phony debt collection scheme, Other scams, No Cash Rule – rent and real estate conveyances
July 2008	Receiving or accepting cash – is it worth it? How do you give cash refunds? How fraudsters use your trust account – counterfeit cheques and bank draft scams
May 2008	Cautions on cash and new scams, handling aggregate amounts of cash, handling cash refunds, list of valuables for monthly trust reconciliation, counterfeit bank drafts – yet another trust account scam
December 2007	Rules for handling cash
October 2007	Know the rules for handling cash, no cash rule in retainer agreements, cash receipt book requirement, withdrawing cash from trust

Email notices to BC lawyers (Notices to the Profession and E-briefs)	
Date	**Column Description**
July 2018	Potential fraudulent scheme involving historical bonds
December 2017	Happy holidays? Not for one BC law firm reeling from a six-figure theft
October 2017	Fraudsters continue to target BC lawyers and their staff in relation to trust funds
July 2017	Email "phishing" scam targets vacationing lawyers
January 2017	Fraudsters again target lawyers disbursing trust funds
August 2016	Phony debt collection nets scammer $500,000
August 2015	Email containing Trojan virus eludes standard security software
May 2015	Attention real estate practitioners: Fraudsters are targeting lawyers disbursing trust funds with a change in payment instructions
April 2015	New email "phishing" scam targets firm accounting staff and lawyers
December 2014	BC law firm's computer system hacked by extortionist
December 2012	Ontario law firm victim of large fraud due to Trojan banker virus
August 2012	Potential fraudulent investment scheme operating in BC
January 2012	Phony debt collection twist
December 2011	BC law firm falls victim to bad cheque scam
July 2011	Phony debt collection scams take many forms
May 2011	Attention real estate practitioners: Fake law firm website used in new variation of bad cheque scam
March 2011	Forgery risks in mortgage transactions
June 2010	Real estate fraud alert
May 2009	Lawyers targeted in new fraud scheme – incorporation and a small business loan
December 2008	Attention real estate practitioners: A variation on the bad cheque scam
September 2008	BC law firm victim of counterfeit cheque scam
July 2008	Client identification and verification: Are you ready?
June 2008	Identity fraud alert
May 2008	Counterfeit bank drafts – yet another trust account scam
January 2008	Fraud alert – counterfeit certified cheques
August 2005	Law Society alert on fraud schemes
July 2005	Scamsters target lawyers
March 2005	New rules require lawyers to guard against scamsters

Trust Assurance advice and education

The Trust Assurance department proactively conducts compliance audits of law firms, reviews annual trust reports, and provides education, advice and resources, to ensure BC lawyers' trust accounting books and records comply with the Legal Professional Act, the Law Society Rules and the Code of Professional Conduct for British Columbia.

The department provides education and resources for lawyers, including the delivery of Trust Accounting courses, a Trust Advice helpline/email service, and on-line resources including a Trust Accounting Handbook, and various checklists and templates.

The department is involved in various anti-money laundering (AML) initiatives, along with referring members that have breached the AML rules to the Professional Conduct department.

The Trust Assurance department participates in the Federation AML Working Group, and the Federation's Trust Assurance Group.

Below is a sample of some of the training sessions and resources provided by or developed in collaboration with the trust assurance department:

Training Sessions - Trust Accounting Course - Trust Accounting 101, now Trust Accounting Essentials

May 9, 2019 (scheduled); November 21, 2018; December 15, 2017; September 21, 2017; March 1, 2017; December 15, 2016; September 27, 2016; April 28, 2016; December 10, 2015; September 9, 2015; April 9, 2015; December 11, 2014; September 15, 2014; M arch 18, 2014; December 5, 2013; September 12, 2013; December 7, 2011; July 7, 2011; May 17, 2011; March 29, 2011; October 28, 2010

Other Training Sessions

1. BC Courthouse Library - Trust Accounting Refresher - Vimeo - November 22, 2016 - Presented by Krista Adamek. Powerpoint in LEO. This online training is available at https://vimeo.com/193923415
2. CLE BC Residential Real Estate Conference - December 3, 2015 - Presented by Krista Adamek and Mark Bussanich
3. South Asian Bar Association - 2014 - Presented by Krista Adamek
4. CBA BC Presentation on Trust Accounting - April 2014 - Presented by Felicia Ciolfitto
5. CLE BC - TV Online learning - October 29, 2013 - Presented by Felicia Ciolfitto and Krista Adamek http://store.cle.bc.ca/productdetails.aspx?pid=2096614

Resources

Law Society Trust Assurance Program Section

https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/trust-accounting-trust-assurance-program/

Trust Accounting Checklist

https://www.lawsociety.bc.ca/Website/media/Shared/docs/trust/checklist_trust-accounting.pdf

Sample Checklist of Internal Controls

https://www.lawsociety.bc.ca/Website/media/Shared/docs/trust/checklist_controls.pdf

Trust Reconciliation Template

https://www.lawsociety.bc.ca/Website/media/Shared/docs/trust/trust-reconciliation.pdf

Trust Accounting Handbook

https://www.lawsociety.bc.ca/Website/media/Shared/docs/trust/Trust-Accounting-Handbook.pdf