Introduction

The Federation of Law Societies of Canada ("Federation") has recently launched a number of initiatives to combat the threat of money laundering and terrorist financing, while also maintaining the public interest in a strong and independent legal profession. The most recent of these initiatives is a proposed Model Rule on Client Identification and Verification. The Model Rule was adopted by the Board of Directors (Benchers) of the Law Society of Alberta at their April 2008 meeting, and came into effect on December 31, 2008.

Following is a brief history of the Federation's initiatives, an explanation of the rationale for the proposed rules, and a summary of the rules and their application to the day-to-day business of Alberta's lawyers.

Background

The Federation was created in 1972, replacing the Conference of Representatives of the Governing Bodies of the Legal Profession in the Provinces of Canada, which had been in existence since 1926. The Conference had historically worked closely with the Canadian Bar Association in areas of mutual interest, such as admissions, mobility, and transfers between provinces.

Over time, the role and structure of the Conference was modified. The Federation was established as an association with representatives from all 14 law societies in the country, two of which are in Quebec. The Federation was at first a venue in which to exchange views and information. Over time, it has become more important to exchange information concerning issues of national interest. As issues have become more complex, the Federation has undertaken a more prominent role in facilitating the exchange of views and information on a variety of subjects.

The mission of the Federation is to operate as a forum for the exchange of views and information of common interest to the various law societies, and to foster cooperation among the governing bodies of the legal profession with a view to achieving uniformity. In appropriate cases, the Federation has been called upon to express the views of the law societies on national and international issues, in accordance with the directions of the members of the Federation. Its involvement in the development of national client identification and verification rules is one example of such activity. The events leading to the development of the model client identification and verification rules are outlined in the following paragraphs.

Growing global concern regarding money laundering led to the development of the Financial Action Task Force ("Task Force"), an inter-governmental organization that develops and promotes policies and legislation to combat money laundering and terrorist financing. The Task Force drafted a series of recommendations on money laundering, in which it recommended that countries implement legislation enabling state

authorities to obtain information from financial institutions and intermediaries, such as lawyers, to facilitate the investigation and prosecution of money laundering and terrorist financing.

Following the Task Force's recommendations, the Canadian government passed legislation now known as the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (the "Act") in 2000. Under that Act, regulated persons and entities are required to report suspicious transactions and certain other financial transactions, prescribed in regulations as those involving $10,000 or more in cash. Reporting persons are prohibited from advising their clients about making the report. Reports are made to the Financial Transactions and Reports Analysis Centre of Canada, a federal agency established to receive and analyze financial intelligence and disclose it to the police.

Despite concerns expressed by the Federation, the federal government promulgated regulations making the Act applicable to lawyers in 2001. The Federation and the Law Society of British Columbia, supported by the Canadian Bar Association, initiated court proceedings and successfully challenged the constitutionality of the legislation, obtaining interlocutory relief from the application of the regulations to lawyers (see Note 1 at bottom).

Lawyers are bound by strict ethical rules, and the courts, in upholding the constitutional challenge, recognized the presumption that all communications between lawyer and client, along with financial information arising from the solicitor-client relationship, are confidential and privileged and may not be disclosed to or obtained by government authorities without a court order.

The Act and regulations have since been amended to remove lawyers from the scope of the legislation. There are concerns at the federal level that the removal of lawyers from the reporting requirements of the legislation means that anti-money laundering efforts in Canada do not meet international Task Force standards.

In the meantime, Canadian law societies reacted by enacting "no cash" rules, restricting lawyers from receiving cash in amounts over $7,500. The Federation developed a "no cash" model rule, in recognition of the importance of anti-money laundering initiatives, and has continued, in its communications with the federal government, to concurrently emphasize the importance of protecting the public by ensuring clients have access to an independent bar that provides confidentiality, solicitor-client privilege and undivided loyalty.

The Department of Finance has recently proposed amendments to the Act and regulations which will address standards for customer due diligence, affecting a variety of industries. The new federal regulations are not, however, applicable to lawyers as a result of the litigation and ongoing discussions between the Federation and the federal government. It is this political environment which has given rise to the development of the Federation's model rule on client identification and verification.

The Federation recognizes the high priority given by the federal government to combating money laundering and terrorist financing. It is increasingly important for Canadian law societies to demonstrate that they are protecting the public by implementing and enforcing appropriate regulations which are consistent with the prevention of fraud and criminal activity, while also maintaining the independence of the bar and protecting solicitor-client privilege. The implementation of the model rule on client identification and verification demonstrates that federal regulation of the legal profession in this area is unnecessary.

Note 1: *Law Society of British Columbia v. Canada* (Attorney General), [2001] B.C.J. No. 2420 (B.C.S.C.); affirmed [2002] B.C.J. No. 130 9 (B.C.C.A.); application for leave to appeal granted but appeal discontinued, [2002] S.C.C.A. No. 52 (S.C.C.).