

Summary: Proposed Amendments to Anti-Money Laundering Model Rules

The Law Society of Alberta is seeking input from the profession regarding proposed amendments to anti-money laundering rules that will impact Alberta lawyers. For more than a decade, Law Society regulations have addressed the risk of money laundering by limiting lawyers' ability to accept cash during a retainer and require lawyers to verify the identity of their clients. These rules are based on the Federation of Law Societies of Canada's (Federation) Model Rules. Input from Alberta lawyers is needed to ensure their views are reflected in the Law Society's response to amendments to the Model Rule being proposed by the Federation.

Under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act and associated Regulations*, the Federal government wanted the legal profession to act as agents of the state, and report secretly about client financial transactions. We successfully opposed that position before the Supreme Court of Canada⁽¹⁾. The Model Rules were our way for the profession to address the problem of money laundering, without lawyers disclosing client confidences to the state.

The Federation is reviewing the Model Rules to ensure that they remain relevant and effective. We want these rules to reflect changes in the federal Regulations, and address concerns by government and others about perceived gaps in our anti-money laundering regime.

The Law Society encourages Alberta lawyers to comment on proposed amendments to the Model Rules found in a recently released Federation Working Group consultation report. Changes to the Rules relate to the following areas:

1. **No Cash Model Rule**

- Cash Limit Threshold:
 - **Current**: The cash limit threshold is \$7,500.
 - **Proposed**: The definition of the cash limit threshold has been clarified. Legal counsel may not accept cash in an amount *greater than* \$7,500.

- Exemption Provisions to the Cash Limit Threshold:
 - **Current**: An exemption to the cash limit threshold applies when a lawyer receives cash from a financial institution or public body, from a peace officer, law enforcement agency or another agent of the Crown acting in his or her official capacity, pursuant to a court order, or to pay a fine or penalty.
 - **Proposed**:
 - The exemption to the cash limit threshold will only apply when a lawyer receives cash, in connection with the delivery of legal services, from a financial institution or public body, or for professional fees, disbursements, expenses or bail, provided that any refund out of such receipts is also made in cash.
 - The exemption that allows a lawyer to receive cash "from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity" or "pursuant to a court order, or to pay a fine or penalty" in amounts greater than the threshold will be removed.

2. **Client Identification and verification Requirements**

A. *Verification of Individuals*

- **Current:** Lawyers can use the “reasonable measures” standard to verify the identity of an individual.
- **Proposed:** The “reasonable measures” standard will no longer be used. Lawyers will be required to obtain and verify the identity of the client.
- **New Provision:** The identity of an individual can be verified using one of the following single process methods:
 - Government-issued photo identification;
 - Credit file; or
 - The Dual process method, which involves referring to information from two different and reliable, independent sources.

B. *Verification of Organizational Clients*

- **Current:** Lawyers can use the “reasonable measures” standard to verify the directors, shareholders and owners of organizations.
- **Proposed:** The “reasonable measures” standard will no longer be used. Lawyers will be required to obtain and verify the names of all directors, and the names and addresses of the owners, of the organization.
- **Current:** The timing for verifying the identity of an organization after engaging in or giving instructions is 60 days.
- **Proposed:** The timing for verifying the identity of an organization after engaging in or giving instructions will be reduced to 30 days.
- **New Provision:** A requirement to obtain and retain information on beneficial owners of an organization and information about trustees, beneficiaries and settlors of the trust, and “in all cases, information establishing the ownership, control and structure of the entity”.
- **New Provision:** A new provision requiring a lawyer to take reasonable measures to identify the most senior managing officer of an entity when the identification of directors, shareholders, owners and beneficial owners cannot be obtained, and to engage in additional monitoring of the client matter.

C. *Use of an Agent to verify identity*

- **Current:** Lawyers can use an agent to verify the identity of an individual who resides outside of Canada.
- **Proposed:** The rule continues to permit the use of an agent. Key changes include a requirement that the lawyer must do their due diligence that the information obtained through an agent is valid, current and in accordance with the single or dual process methods.

3. **Ongoing Monitoring**

- **New Provision:** Requires ongoing monitoring of clients and requirement to withdraw from representation of the client if, once retained, the lawyer becomes aware that they would be assisting the client in fraud or other illegal conduct.

4. **Trust Accounting Model Rule**

- **New Provision:** Prohibits the use of a lawyer's trust account for a purpose unrelated to the provision of legal services.

Changes to the Model Rules require unanimous approval of the Federation Council. If granted, the Model Rules will then be forwarded to law societies for adoption. Changes to the rules in Alberta would require approval by of the Law Society's Benchers.

Since this is not an exhaustive summary, Alberta lawyers are encouraged to read the Federation Consultation Report and Proposed Amendments to the Model Rules in detail to provide feedback. The Report can be found [here](#).

To ensure your views on these important changes are considered, please [make a submission](#) by Monday, March 5, 2018.

⁽¹⁾ *Canada (A.G.) v. Federation of Law Societies of Canada [2015] 1 S.C.R. 401.*