



**NOVA SCOTIA
BARRISTERS' SOCIETY**

Lawyers Responsibilities in preventing Money Laundering.

November 14, 2024

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What is Money Laundering?

The process of moving proceeds of crime through financial systems to disguise their illegal origins, turning the funds into “clean money”





Impacts of Money Laundering

- Perpetuates / expands criminal activity, increasing harms.
- Distorts markets, eg push up housing prices.
- Undermines legitimate businesses.
 - hard to compete with someone where the primary purpose is to launder money, and profit is secondary.
- Diminishes tax revenue, higher burden on honest taxpayers.





INTEGRATION
Getting the now
apparently legitimate
money back out of
the financial system.


Purchase of luxury
assets, financial
investments,
commercial /
industrial investments

Collection of
dirty money



**A TYPICAL
MONEY
LAUNDERING
SCHEME**



PLACEMENT

Sneaking dirty money into a
business or legal account.

LAYERING

Moving the money around and
mixing it with legitimate money until
its original source is obfuscated

- Transfer on the bank account of company "X"
- Wire transfer to offshore bank
- Loan to company "Y"
- Payment by "Y" of false invoices to company "X"





Why are lawyers targeted / valued by bad actors?

- Disguise trail of funds
- Transfers from trust accounts appear legitimate
- Take advantage of solicitor-client privilege
- Lawyers may be used for creation of shell companies, trusts etc which are used to disguise transactions



FATF and AML in Canada

- Financial Action Task Force is an international organization made up of governments from around the world.
 - Creates and enforces policies and standards to fight financial crime.
- In 2016 highly critical of fact that legal profession not covered by federal regulatory scheme, and dismissive of law society regulations at the time.
 - New Client Identification and Verification regulations adopted in N.S. in 2020





FATF and AML in Canada

- Canada is being audited by FATF in 2025
 - Law Societies will be part of the audit.
- Failure to meet standards could result in Canada being added to the “Grey List”
 - identifies countries with strategic deficiencies in their AML/CFT system.
 - Potentially huge impact on the Canadian economy and on international investment.

NEWS: Australia to spend \$166M to stay off FATF ‘grey list’ and shore up its AML defences



Your responsibilities:

Code of professional conduct:

Dishonesty, Fraud by Client or others

3.2-7 A lawyer must never:

- knowingly assist in or encourage any dishonesty, fraud, crime, or illegal conduct;
- do or omit to do anything that the lawyer ought to know assists in or encourages any dishonest, fraud, crime, or illegal conduct by a client or others; or
- instruct a client or others on how to violate the law.

Illegal conduct includes Money Laundering and terrorist financing.



Your responsibilities:

Criminal Code:

- Possession of property obtained by crime is an offence
- Laundering proceeds of crime is an offence
 - Includes recklessness standard.
 - It is an offence to deal with property or proceeds of property knowing or believing or being reckless as to whether they are the proceeds of crime.



Your responsibilities:

NSBS Regulations:

- Provide a specific minimum set of due diligence requirements that must be carried out in all cases.
- Starting point for review of a matter, from which you can then apply your professional judgement and risk assessment.



Your responsibilities: Professional Judgement and Risk Assessment

- The Code of conduct, regulations and the criminal code all require professional judgement, assessment of risk and taking appropriate steps based on the risk factors.
- **You must be objectively satisfied that the legal services or transaction is for a legitimate purpose.**



Your responsibilities:

Duty to withdraw:

You have a duty to not act or to withdraw from representing a client if you know or ought to know that you would be assisting in fraud or other illegal conduct, including money laundering.



Regulations

- Cash transactions
- Client identification and verification.
- Use of a trust account

These are due diligence steps that are required in all matters as **part of** your overall duty to objectively satisfy yourself that a matter is legitimate by applying risk assessment and risk management strategies.



No Cash Rule

Limitation on Cash

4.12.2 A lawyer must not receive or accept cash in an aggregate amount of greater than \$7,500 CAD in respect of any one client matter.

Exception

4.12.5 Despite subregulation 4.12.4, subregulation 4.12.2 does not apply when the lawyer receives cash in connection with the provision of legal services by the lawyer or the lawyer's firm:

- from a financial institution or a public body;
- from a peace officer, law enforcement agency or other agent of the Crown acting in his or her official capacity;
- to pay a fine, penalty or bail; or
- for professional fees, disbursements, or expenses, provided that any refund out of such receipts is also made in cash.



Client identification and verification.

Lawyers have an obligation to know their client, understand the client's financial dealings in relation to the retainer and manage any risks arising from the business relationship with the client



Client identification and verification.

- Client identification
 - Obtain and record, with applicable date client information outlined in 4.13.5
- Verification of Clients identity is required where lawyer engages in or gives instructions in respect of receiving, paying or transferring funds



Verification of Client I.D.

- Verify the identification of the client using appropriate documents (Retain copies and record date. For an individual:
 - Government issued photo i.d. in person, or
 - Government issued photo i.d. verified remotely with the use of an appropriate authentication technology solution *. Note: Pandemic relief (verifying identity via video call without authentication technology) is no longer permissible.
 - Credit file method, or
 - Dual process method, or
 - Use of an appropriate agent to carry out one of the above
- For organizations:
 - Written confirmation from a government registry, with name and address of organization, names of directors.
 - Other info per. Reg 4.13.14



Verification of Client I.D. Source of Funds

- Making inquiries regarding the source of the funds received and documenting the responses is required.
 - Use your professional judgement to assess the information
 - Is it reasonable given what you know about the client?
 - Is it consistent with the nature of the retainer?
 - If in your professional judgement you have concerns about the information, you should take additional steps to verify, such as obtaining documents or verifying with other parties, in order to determine whether you can proceed.



Ongoing Monitoring requirement.

- You are required to periodically assess:
 - Whether information about the client's activities, source of funds used and instructions are consistent with the purpose of the retainer and the information you already have.
 - The overall risk involved in the client matter.

Keep dated records of the assessment.



Risks in the use of a trust account.

Improper use of a trust account can increase money laundering risks.

For example:

- **Facilitating transactions using a trust account without performing legal services.**
- **Failing to make reasonable inquiries on a retainer before accepting monies into a trust account**
- **You must not allow your clients to use your trust account like the clients personal or business bank account**



Regulations on use of a trust account. Requirement for a Trust Relationship

10.2.9 A practising lawyer must not use a trust account where there is no trust relationship.

10.2.9.1 A practising lawyer must pay into and withdraw from, or permit the payment into or withdrawal from, a trust account only money that is directly related to legal services that the practising lawyer or law firm is providing.

10.2.9.2 A practising lawyer must pay out money held in a trust account as soon as practicable upon completion of the legal services to which the money relates.



Professional Judgement

- Knowing your client
- Fully understanding the purpose of the retainer and the transactions you are involved in.
- Assessing Risk
- Being aware of potential risk factors. Spotting the “red flags”
- Following up for additional information where unusual items or risk factors show up.

- If something about the client or the transaction seems unusual, doesn't seem to make sense or isn't consistent with other information that you have, then you must ask more questions.





Red Flags



- **The Federation has put out guidance on warning signs of money laundering based on the nature of the risk, as well as guidance for specific types of practice.**
 - **We strongly encourage you to review these.**

- **Remember: You must be objectively satisfied that the legal services or transaction is for a legitimate purpose.**

Red Flags Quick Reference Guide

December 2023



Identity of the Client

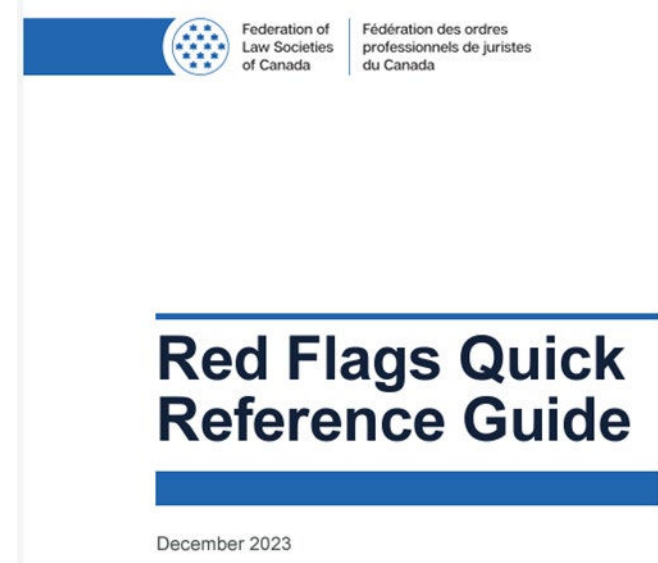
Behavior of the Client

Source of Funds/ Source of Wealth

Nature of the Retainer or Transaction

Parties

Red Flags





Resources:



Federation of Law Societies of Canada:
Online learning program, comprised of 5 modules

- [1. Understanding the Problem of Money Laundering and Terrorist Financing](#)
- [2. Assessing and Managing Money Laundering Risks](#)
- [3. Key Due Diligence Requirements](#)
- [4. Proper Use of Trust Accounts](#)
- [5. Cash Transactions](#)

The training is available [here](#).

Links can be found on our website or directly on the Federation website

Highly recommended – everyone should go through these online modules



Resources:



<https://flsc.ca/what-we-do/fighting-money-laundering-and-terrorist-financing/>

Guidance Publications for Members of the Profession

- [FAQs on the Client Identification and Verification Rules](#) (March 2023)
- [Guidance for the Legal Profession: Your Professional Responsibility to Avoid Facilitating or Participating in Money Laundering and Terrorist Financing](#) (March 2023)
- [Guidance on Politically Exposed Persons](#) (December 2023)
- [Source of Funds Guidance](#) (December 2023)
- [Guidance on Monitoring Obligations](#) (July 2020)
- [Guidance on Using an Agent](#) (July 2020)
- [Risk Assessment and Compliance](#) (December 2023)
- [Quick Reference Guide on Potential Risks \(Red Flags\)](#) (December 2023)
- [Risk Assessment Case Studies for the Legal Profession](#) (February 2020)
- [Risk Advisories for the Legal Profession: Advisories to Address the Risks of Money Laundering and Terrorist Financing](#) (December 2019)



Thank You

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