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Anti-Money Laundering, Know your Client Rules, and Other Rule Changes

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Background

Legal professionals are "gatekeepers" within money laundering and terrorist financing systems because of our unique role in facilitating financial transactions.

Legal professionals may be used to:

- give an appearance of legitimacy to a criminal transaction;
- facilitate money laundering through the creation of a company or trust, and/or the purchase and sale of property; and
- eliminate the trail of funds back to a criminal through the use of a professional trust account

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Background Con't

- Model Rule on Cash Transactions prohibiting the receipt of cash in amounts over $7500 was adopted in 2004 and amended in 2018
- Model Rule on Client Identification and Verification was adopted in 2008 and amended in 2018
- 2018 amendments require lawyers to inquire into the source of funds for financial transactions, engage in periodic monitoring of their business relationships with clients and make reasonable efforts to identify those who own or control 25% or more of a corporation or other entity (beneficial owners)

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Definitions

- "DNFBP" - Designated Non-Financial Businesses and Professions (includes lawyers)
- "FATF" - Financial Action Task Force is an international, intra-governmental body combatting money laundering and terrorist financing
- "FINTRAC" – Financial Transactions and Reports Analysis Centre of Canada (est. 2000)
- "Money laundering" - the transfer, use, or delivery of property or proceeds with the intent to conceal or convert the property or proceeds, knowing that they were derived from criminal activity.
- "PCMLTFA" - Proceeds of Crime (Money Laundering) and Terrorist Financing Act
- "STR" – Suspicious Transaction Report made to FINTRAC
- "Terrorist Financing" - the provision, collection and use of property to facilitate or carry out any terrorist activity

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PCMLTFA

The object of the Act is:

- to implement specific measures to detect and deter money laundering and the financing of terrorist activities to facilitate the investigation or prosecution of money laundering and terrorist financing offences,

- to respond to the threat posed by organized crime by providing law enforcement officials with the information they need to deprive criminals of the proceeds of their criminal activities, while ensuring that appropriate safeguards are put in place to protect the privacy of persons with respect to personal information about themselves

- to assist in fulfilling Canada's international commitments to participate in the fight against transnational crime, particularly money laundering and the fight against terrorist activities

- to enhance Canada's capacity to take targeted measures to protect its financial system and to facilitate Canada's efforts to mitigate the risk that its financial system could be used as a vehicle for money laundering and the financing of terrorist activities

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Suspicious Transaction Report

A suspicious transaction report is a type of report that is submitted to FINTRAC when a financial transaction occurs, or is attempted, in the course of a reporting entity's activities and there are reasonable grounds to suspect that the transaction is related to the commission or the attempted commission of a money laundering or terrorist activity financing offence.

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Canada (Attorney General) v. Federation of Law Societies of Canada, [2015] 1 SCR 401

The Supreme Court of Canada held that certain provisions in the PCMLTFA obliging legal professionals to collect and retain information not required for client representation, granting expansive powers to search law offices, and providing inadequate protection for solicitor-client privilege, violated provisions of the Canadian Charter of Rights and Freedoms and undermined the ability of legal professionals to comply with their duty of commitment to the client's cause, a principle of fundamental justice.

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Cullen Commission

"It is true that the exclusion of lawyers from the PCMLTFA regime means that FINTRAC does not receive reports from lawyers; it therefore lacks the same lens into lawyers' (and their clients') activities as it has for other professions. […] However, it is inaccurate to say that lawyers… 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."

- Commission of Inquiry into Money Laundering in British Columbia (2022), Final report / Austin F. Cullen, Commissioner.

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Financial Action Task Force

- The Financial Action Task Force (FATF) leads global action to tackle money laundering, terrorist and proliferation financing.

- The FATF researches how money is laundered and terrorism is funded, promotes global standards to mitigate the risks, and assesses whether countries are taking effective action.

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FATF con't

The FATF monitors countries to ensure they implement the FATF Standards fully and effectively.

In total, more than 200 countries and jurisdictions have committed to implement the FATF's Standards and they are assessed with the help of nine FATF Associate Member organizations and other global partners, the IMF and World Bank.

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Mutual Evaluation

- Canada was last subject to assessment by the FATF in 2016
  - Concerns regarding the exclusion of lawyers from the PCMLTFA and in particular the lack of requirement for STRs

- Next assessment: **November 2025**
  - Will include interviews with
    - all 13 Canadian Law Societies
    - Law firms
    - Federal government (DOJ, DOF etc)
    - Law enforcement
    - Banking representatives
    - Industry representatives
    - Others

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If not FINTRAC, then…

- *Code of Professional Conduct* Rules 3.2-7 and 3.2-8 - lawyers serve the public interest and must not knowingly assist in or encourage dishonesty, fraud, crime or illegal conduct. Applies whether the lawyer has actual knowledge or is willfully blind or reckless.
- Model Rule on Client Identification and Verification that obliges lawyers to conduct robust customer due diligence and maintain records of clients and their files.
- Model Rule on Cash Transactions that restricts the amount of cash a lawyer can receive to $7,500 CAD in respect of any one client matter.
- Model Trust Accounting Rule that restricts the use of a lawyer's trust accounts.

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Client Identification and Verification Rule

When retained to provide legal services, a lawyer must acquire basic knowledge about the clients and their financial dealings.

Client identification and verification requirements are part of your obligation to know your client, and ensure that you understand the intent and purpose of the legal services for which you have been retained.

Identification is the process of obtaining and recording basic information about the client

Verification is the process of obtaining information to confirm that the client is who or what they say they are

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Source of Funds

The Regulations require you to inquire about the expected source and origins of the funds related to the legal services to be provided.

You should make sufficient inquiries to assess whether there is anything that suggests the proposed transaction is inconsistent with the client's apparent means, and the circumstances of the transaction.

Questions to consider include:

- Is someone other than the client providing information about the source of funds?
- Is the disclosed source consistent with the knowledge about the client's profile and activity?
- Is there anything unusual about the source of the funds in the context of the transaction?

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Ongoing Monitoring

During the retainer you must:

- ✓ periodically assess whether the client's information in respect of their activities and the source of their funds are consistent with the purpose of the retainer and the information about the client that you have obtained under the rule;
- ✓ assess whether there is a risk that you might be assisting in fraud or other illegal conduct.
- ✓ keep a dated record of your client monitoring measures, which may include the steps taken and any information obtained

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Something New: Title Insurers

- On October 1, 2025, amendments to the Regulations made pursuant to the PCMLTFA came into force designating Title Insurers as "Reporting Entities"

- As reporting entities under the PCMLTFA, Title Insurers are required to:
    - develop an Anti-Money Laundering compliance program;
    - meet identity verification and record keeping requirements; • submit required reporting to FINTRAC, including suspicious transaction reports and terrorist property reports; and
    - follow ministerial directives

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Lawyers as Agents

If a lawyer agrees to act as an Agent for a Title Insurer, they should at minimum:

- consider whether any of the information being provided to the title insurer is subject to confidentiality or solicitor-client privilege and seek the client's consent and waiver of privilege if required;
- advise the client there is a risk that confidential or solicitor-client privileged information may be disclosed to the federal government (if they end up in a suspicious transaction report);
- seek the client's consent to disclose confidential information to the title insurer.

DOCUMENT all steps taken in your file and obtain the client's consent in writing!

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Informed Consent

Client must be informed:

i. of the specific information and verification records that may be disclosed by the lawyer to the title insurer;

ii. that the information disclosed by the lawyer will be used by the title insurer to meet their requirements as a reporting entity under the PCMLTFA;

Iii. as a reporting entity, the title insurer is required to submit reports to FINTRAC, which include suspicious transactions reports and information disclosed about the client by the lawyer could be reported to FINTRAC by the title insurer as a part of these reports;

iv. FINTRAC discloses information received from reporting entities to law enforcement as it considers appropriate;

v. the fee that will be received by the legal professional in acting as the agent for the title insurer.

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Questions?

Resources:

https://nsbs.org/for-lawyers/practising/anti-money-laundering-client-id/

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

https://www.fatf-gafi.org/en/home.html