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

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Elaine Cumming
Director, Professional Responsibility

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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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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 assessed by the FATF in 2016
  - Concerns regarding the exclusion of lawyers from the PCMLTFA and in particular the lack of requirement for STRs

- Next Canadian assessment: **November 2025**

  Included 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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FATF Report
September 28, 2026

- FATF report recognizes the legal profession as a core component of Canada's AML regulatory framework.
- FATF is not singularly focused on bringing lawyers within the federal reporting regime and instead acknowledges the constitutional context in which legal profession regulation operates.
- Viewed alongside the 2016 evaluation, represent significant improvements in FATF's assessment of the Canadian legal profession.

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FATF Report Con't

- recognizes the significant progress made by Canada's legal regulators to strengthen their AMLTF framework over the past decade, supported by significant preventive, supervisory, educational, and disciplinary measures.

- recognizes the constitutional principles that underpin the administration of justice in Canada and within which AMLTF regulation must operate.

- acknowledgement reflects years of sustained collaboration by Canada's law societies to build a robust framework that contributes to the integrity of Canada's AMLTF regime.

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FATF Report Con't

- accepts that significant regulatory measures exist but remains unconvinced that supervision is sufficiently risk-based or intensive to demonstrate advanced effectiveness.

- raises concerns regarding sanctions and enforcement. FATF did not appear to question the existence of law society disciplinary powers but is not satisfied that available sanctions are producing sufficiently visible, proportionate, and dissuasive AML outcomes.

- expects stronger evidence that significant regulatory findings lead to appropriate enforcement action beyond the disciplinary process.

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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

NSBS Council will be approving amendments to the Regulations that will create administrative penalties (ie fines) for failing to comply with AMLTF obligations as set out in Regulations 4.12 and 4.13

- Emphasize lawyers' obligations with regard to AMLTF and provide appropriate and proportionate sanctions for violations.
- Administrative penalties of up to $2,500 in the first instance of non-compliance and up to $5,000 for subsequent instances may be assessed.
- Regulations play a key role in establishing standards of financial responsibility to assist in anti-money laundering efforts by requiring lawyers to know their clients, identify red flags, and manage potential risks involved with suspicious transactions.

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Questions?

Resources:

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

https://flsc.ca/anti-money-laundering/

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

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