Law Society of British Columbia – Regulation of the Practice of Law

Overview

1. The Law Society of British Columbia (the "**Law Society**") regulates the practice of law in British Columbia in keeping with its mandate to uphold and protect the public interest. It does so by establishing the qualifications required to practise law; setting standards of conduct which apply to lawyers, articling students, and law firms; educating the profession on those standards; and taking further action (disciplinary or remedial measures) against those who fail to meet the expected standards.

2. This summary begins with an overview of the sources of and structure of the Law Society's regulatory powers, before describing the historical development of rules related to the Law Society's anti-money laundering ("**AML**") efforts. It then sets out the current state of AML regulation by the Law Society,[1] and concludes by describing the Law Society's plans or proposals to amend the rules in order to further address the risks of money laundering.

Regulatory Powers: Sources and Structure

3. For information on the Law Society's rule-making authority, see paragraph 29 of the Overview Report on the Regulation of Legal Professionals in British Columbia.[2]

4. The Law Society Rules (the "Rules"), which have the status of a regulation, deal with the organization of the Law Society, membership and authority to practise law, protection of the public (including complaints, discipline, education and the use of trust accounts), discipline, hearings and appeals, and fees.[3] The Rules must be complied with. A breach of the Rules by a lawyer amounts to a discipline violation.

5. In addition to the Rules, the Law Society also produces the Code of Professional Conduct for British Columbia (the "Code").[4] For information on the Code, see paragraphs 33-35 of the Overview Report on the Regulation of Legal Professionals in British Columbia.

Overview of Historical Development of Anti-Money Laundering Rules

6. Later sections of this summary deal with the specifics of particular rules that the Law Society has developed, and also should be read together with the Commission's related overview reports, including on initiatives undertaken by the Federation of Law Societies of Canada (the

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[1] This summary is current as of September, 2020
[2] All references to Overview Reports are to the versions circulated in draft to participants on November 3, 2020.
[3] A complete copy of the current Rules can be found at https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules/
[4] The Code, based on the Federation of Law Societies of Canada Model Code of Professional Conduct, came into effect on January 1, 2013, replacing its predecessor, the Professional Conduct Handbook (January 1993). A complete copy of the current version of the Code, along with annotations, can be found here: https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia/

"FLSC"). This section of the summary is intended simply to provide an overview of developments.

7. The issues specifically around proceeds of crime, terrorist financing and money laundering have been on the Law Society's radar since the late 1980s, when federal "proceeds of crime" legislation was proposed and went into force. More generally, however, by that point the Law Society already had obligations in place on members to protect the public against lawyer involvement, whether knowingly or unwittingly, in criminal activity. The Canons of Legal Ethics (now reproduced in Code section 2.1) that have been in effect since 1921 states that a lawyer "owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law."

8. The Professional Conduct Handbook, which came into effect in 1993, required lawyers to be on guard against being used to further dishonesty, crime or fraud. Lawyers were required by the Law Society to know their clients and understand the purpose and object of their retainers, and were expected to use their trust account only for matters in which they were acting as legal advisors.[5]

9. In November 2001, the federal *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17, came into force. While the Law Society continued to regard AML as a priority, there was a concern that Parliament had failed to properly balance interests and, in so doing, had unreasonably restricted solicitor-client privilege and client confidentiality principles. As a result, the Law Society and the FLSC both commenced litigation challenging the constitutionality of the provisions of that Act, and its regulations, which imposed obligations on lawyers. The result of this litigation was an interlocutory order exempting lawyers from the application of the legislation.

10. However, the Law Society recognized that AML was an important objective. Recognizing that further professional regulation would strengthen the fight against money laundering, the Law Society took a prominent role in the FLSC's national working group for the development of model rules to specifically address the risk of money laundering.

11. In 2004, the Law Society became the first regulating body for the legal profession in Canada to introduce a rule limiting the amount a lawyer may receive in cash on a client matter (colloquially referred to as the "no cash" rule). Initially, the rule prohibited lawyers from accepting $10,000 or more in cash, but by June 2005 the Benchers had amended the rule to stipulate that BC lawyers must not accept $7,500 or more in cash unless an exemption applied. This change brought the rule in line with the model rule proposed by the FLSC in July 2004.[6]

[5] See for example *Elias v. Law Society of British Columbia* (1996), 26 B.C.L.R. (3d) 359 (C.A.). In the early 1990s, a number of Benchers' Bulletins were published with notes for the profession on issues around proceeds of crime and the practice of law.
[6] LSB002165

In late 2008, rules governing client identification and verification, again based on model rules developed by the FLSC as part of the national working group, were instituted.[7]

12. In 2013, when the Code came into effect, it made explicit that the requirement that "A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud," which was set out in the predecessor Professional Conduct Handbook also includes additional requirements when acting for companies and organizations.

13. In 2015, the Supreme Court of Canada ruled that the provisions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* were constitutionally inapplicable to lawyers, in *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7. Following that decision, the Law Society participated in a new national FLSC working group, the FLSC Anti-Money Laundering and Terrorist Financing Working Group (the "FLSC AMLTF Working Group") with the goal of, among other things, strengthening the rules intended to fight money laundering.

14. While the process of review and revision for the rules was ongoing by the FLSC AMLTF Working Group, the Discipline Committee of the Law Society issued a high-profile disciplinary decision for misuse of a trust account and failure to make inquiries in the face of suspicious circumstances. For information on *Law Society v. Gurney*, 2017 LSBC 15, see paragraphs 65-68 of the Overview Report on the Regulation of Legal Professionals in British Columbia. In 2019, the Law Society enacted a new rule, Rule 3-58.1, explicitly stating that trust accounts may only be used for legal services. The following AML-related conduct issues are internally referred to as "misuse of a trust account" and/or "failure to make inquiries". These are discussed in more detail in the summaries on Trust Assurance and Investigations and Discipline:

    a) Using a lawyer's trust account to move funds in the absence of legal services being provided directly related to those funds (now Rule 3-58.1);

    b) Failing to take reasonable steps to pay out funds from a lawyer's trust account as soon as practicable on completion of the legal services to which the funds relate (now Rule 3-58.1);

    c) Engaging in any activity that the lawyer knew or ought to have known assisted in or encourages any dishonesty, crime or fraud (*Code* 3.2-7);

    d) Failing to make reasonable inquiries where suspicious circumstances or red flags of dishonesty, crime or fraud are present, before proceeding with the matter. This includes the requirement to make inquiries about, among other things: the source of money,

[7] LSB009281

instructions to disburse funds, the nature of the transaction or retainer, the identity of parties involved, including the client and associates.

15. The FLSC AMLTF Working Group consulted on proposed rule changes from October 2017 through mid-March of 2018 and issued a report on the model rules in August 2018 after consultation with the profession.[8] In October 2018, the model rules dealing with client identification and verification ("CIV") and cash transactions were updated, and a new model trust accounting rule was introduced.

16. The Law Society's Act and Rules Committee considered revisions to the Rules to give effect to the FLSC model rule updates and the recommended rule changes were adopted by the Benchers in July 2019, effective that same month. The cash transaction rules removed an exemption for in-house counsel, limited the exemption for cash received pursuant to a court order, and removed the $1,000 exemption for returning funds received in cash by a means other than cash. At the same time, the Law Society enacted Rule 3-58.1, which formalized the existing expectation that a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm. The CIV rule amendments, made effective January 1, 2020, made clear a lawyer's over-arching obligation to know their client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client. The amendments introduced more stringent requirements to verify a client's identity, including obtaining increased beneficial ownership information, obtaining information about the source of money when providing legal services in respect of a financial transaction, as well as periodically monitoring professional business relationships with clients while retained.

Current Status of AML-related Rules in British Columbia

17. Presently there are several kinds of prohibitions and rules that are part of the Law Society's fight against AML. Although touched on above, these are described in more detail below.

Avoiding Dishonesty, Crime or Fraud in General

18. As a general matter, a lawyer must know their clients, understand the purpose of the retainer, and be on guard against being used by an unscrupulous client to further illegal conduct. A lawyer cannot act for a client, or continue to act, if the lawyer knows or ought to know that they are facilitating any illegal conduct. This obligation is set out in both the Rules and the Code.

19. Rule 3-109 states:

[8] See LSB000247

> If, in the course of obtaining the information and taking the steps required in Rule 3-100 *[Requirement to identify client]*, 3-102 (2) *[Requirement to verify client identity],* 3-103 *[Requirement to identify directors, shareholders and owners]* or 3-110 *[Monitoring]*, or at any other time while retained by a client, a lawyer knows or ought to know that he or she is or would be assisting a client in fraud or other illegal conduct, the lawyer must withdraw from representation of the client.

20. The Code states at r. 3.7-7(b) that a lawyer must withdraw from acting where "a client persists in instructing the lawyer to act contrary to professional ethics."

21. The Code sets out a Canon of Legal Ethics at section 2.1 which, as noted in part earlier in this summary, has been in effect in the province since 1921. It begins, at r. 2.1-1(a), by stating that "A lawyer owes a duty to the state, to maintain its integrity and its law. A lawyer should not aid, counsel or assist any person to act in any way contrary to the law." Further, at r. 2.1-3(e), it states that the "office of the lawyer does not permit, much less demand, for any client, violation of law or any manner of fraud or chicanery."

22. The Code further makes explicit in r. 3.2-7 that:

> A lawyer must not engage in any activity that the lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.[9]

23. The commentaries on r. 3.2-7 note as follows:

> **[1]** A lawyer should be on guard against becoming the tool or dupe of an unscrupulous client, or of others, whether or not associated with the unscrupulous client.
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> **[2]** A lawyer should be alert to and avoid unwittingly becoming involved with a client engaged in criminal activities such as mortgage fraud or money laundering. Vigilance is required because the means for these, and other criminal activities, may be transactions for which lawyers commonly provide services such as: establishing, purchasing or selling business entities; arranging financing for the purchase or sale or operation of business entities; arranging financing for the purchase or sale of business assets; and purchasing and selling real estate.
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> **[3]** Before accepting a retainer, or during a retainer, if a lawyer has suspicions or doubts about whether he or she might be assisting a client in any dishonesty, crime or fraud, the lawyer should make reasonable inquiries to obtain information about the client and about the subject matter and objectives

[9] See also Code r. 2-2.1 ("A lawyer has a duty to carry on the practice of law and discharge all responsibilities to clients, tribunals, the public and other members of the profession honourably and with integrity") and r. 5.1-2(b), which states that, when acting as an advocate, a lawyer must not "knowingly assist or permit a client to do anything that the lawyer considers to be dishonest or dishonourable."

of the retainer. These should include making reasonable attempts to verify the legal or beneficial ownership of property and business entities and who has the control of business entities, and to clarify the nature and purpose of a complex or unusual transaction where the nature and purpose are not clear.

[3.1] The lawyer should also make inquiries of a client who:

(a) seeks the use of the lawyer's trust account without requiring any substantial legal services from the lawyer in connection with the trust matter, or

(b) promises unrealistic returns on their investment to third parties who have placed money in trust with the lawyer or have been invited to do so.

[3.2] The lawyer should make a record of the results of these inquiries.

24. As set out in commentaries [3]-[3.1], there is a duty to make inquiries in suspicious circumstances. In addition to the red flags identified in commentary [3.1], the Law Society publishes a number of documents to assist lawyers in identifying suspicious circumstances and risk factors, including in the context of potential money-laundering.[10]

25. Code rule 3-2.8 then goes on to address the additional professional responsibilities of a lawyer acting for an organization, including a corporation, where they learn that the organization has acted, is acting, or proposes to act in a way that is dishonest, criminal or fraudulent:

3.2-8 A lawyer who is employed or retained by an organization to act in a matter in which the lawyer knows or ought to know that the organization has acted, is acting or intends to act dishonestly, criminally or fraudulently, must do the following, in addition to his or her obligations under rule 3.2-7:

(a) advise the person from whom the lawyer takes instructions and the chief legal officer, or both the chief legal officer and the chief executive officer, that the proposed conduct is, was or would be dishonest, criminal or fraudulent and should be stopped;

(b) if necessary because the person from whom the lawyer takes instructions, the chief legal officer or the chief executive officer refuses to cause the proposed conduct to be stopped, advise progressively the next highest persons or groups, including ultimately, the board of directors, the board of trustees, or the appropriate committee of the board, that the proposed conduct was, is or would be dishonest, criminal or fraudulent and should be stopped; and

(c) if the organization, despite the lawyer's advice, continues with or intends to pursue the proposed wrongful conduct, withdraw from acting in the matter in accordance with section 3.7.

[10] See Resources at https://www.lawsociety.bc.ca/our-initiatives/anti-money-laundering/guidance-for-the-profession/

26. The commentaries to r. 3-2.8 clarify that "dishonest, criminal or fraudulent" conduct can include acts of omission, noting that

> **[3]** … often it is the omissions of an organization, such as failing to make required disclosure or to correct inaccurate disclosures that constitute the wrongful conduct to which these rules relate. Conduct likely to result in substantial harm to the organization, as opposed to genuinely trivial misconduct by an organization, invokes these rules.

27. In addition to these overarching rules dealing with illegal or dishonest activities, the Rules contain specific provisions designed to reduce the likelihood of lawyers becoming unwittingly involved in money laundering. These are discussed below.

Restrictions on cash transactions

28. Rule 3-59 (known as the "no cash" rule) was created in 2004 to protect against money laundering by imposing restrictions on the receipt of cash in order to reduce the risk that lawyers can be used to place illicit cash into the banking system.[11] The Rule, which states that a lawyer or law firm "must not receive or accept cash in an aggregate amount greater than $7,500 in respect of any one client matter,"[12] applies when a lawyer or law firm engages in any of the following activities on behalf of a client, including giving instructions on behalf of a client in respect of those activities:
    (a) receiving or paying funds;
    (b) purchasing or selling securities, real property or business assets or entities; or
    (c) transferring funds or securities by any means.[13]

29. Rule 3-59(3) does not apply when a lawyer or law firm receives or accepts cash in connection with the provision of legal services by the lawyer or law firm
    (b) from a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
    (c) pursuant to the order of a court or other tribunal for the release to the lawyer or the lawyer's client of cash that has been seized by a peace officer, law enforcement agency or other agent of the Crown acting in an official capacity,
    (d) to pay a fine, penalty or bail, or
    (e) from a financial institution or public body.[14]

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[11] See "Anti-money laundering cash transaction rule essentials," by Barbara Buchanan, QC, in the Summer 2019 Benchers' Bulletin at pp. 10-14 for more information, at LSB007292

[12] Rule 3-59(3). This provision was amended in July 2019 to change the cash limit from "less than $7,500" to "greater than $7,500" in order to align with a corresponding amendment to the FLSC model rule on cash transactions. Note that where the cash is in foreign currency, it is deemed to have been received or accepted as converted into Canadian dollars based on the official conversion rate published by the Bank of Canada: see Rule 3-59(7) for more details.

[13] Rule 3-59(1)

[14] Rule 3-59(2)

30. As has been set out in many Law Society publications to the profession, including conduct review summaries, it is not permissible to multiply the cash limit where acting for two or more clients in the same matter or transaction (that is, acting for two clients in the same transaction does not raise the limit to $15,000). Additionally, the restriction to an aggregate amount means that lawyers and law firms must track cash amounts received over a file's duration in order to determine that cash received at different intervals on a client's behalf do not result in a breach of the Rule.

31. There is a limited exception to Rule 3-59(3) which permits a lawyer or law firm to receive or accept cash in an aggregate amount greater than $7,500 in respect of a client matter for "professional fees, disbursements or expenses in connection with the provision of legal services by the lawyer or law firm."[15] "Professional fees," "disbursements" and "expenses" are all defined in Rule 3-53. Cash originally provided as a retainer cannot later be used for another purpose.

32. If a lawyer or law firm has received more than $7,500 in cash in circumstances where it is permitted under the rule, the lawyer must make any refund in cash: Rule 3-59(5). The use of a trust cheque payable to cash or bearer is not acceptable; they must physically attend at the financial institution to make a cash withdrawal, and then issue a cash receipt for the refund and have the client sign for receipt.

33. If a lawyer or law firm receives cash in a manner that is not permitted under the Rule, they must
    (a) make no use of the cash,
    (b) return the cash, or if that is not possible, the same amount in cash, to the payer immediately,
    (c) make a written report of the details of the transaction to the Executive Director within 7 days of receipt of the cash, and
    (d) comply with all other rules pertaining to the receipt of trust funds.[16]

34. Rule 3-70, dealing with cash records, requires lawyers to maintain a cash receipt book for receiving and refunding cash, and requires the date, amount, file number, client's name, payer's name, payer's and lawyer's signatures, and any dates on which the receipt was modified.

Client identification and verification

35. The Law Society recognizes that client due diligence is an important tool in decreasing the risk that a lawyer may be unknowingly involved in money laundering. As noted above, the first CIV rules – sometimes referred to as "know your client" rules – were enacted in 2008.

36. Substantial amendments to strengthen the CIV rules, based on the FLSC Model Rules issued

[15] Rule 3-59(4)
[16] Rule 3-59(6)

in 2018, came into effect on January 1, 2020. In April 2020, the Benchers adopted a further revision to the CIV rules to permit lawyers to use an electronic image of a document that is created by and obtained directly from a registry maintained by the government to verify the identity of an organization.

37. The CIV rules are contained in Part 3, Division 11 of the Rules. The obligations in this division are stated to be in "keeping with a lawyer's obligation to know his or her client, understand the client's financial dealings in relation to the retainer with the client and manage any risks arising from the professional business relationship with the client": Rule 3-99(1.1). The division applies (subject to certain exceptions)[17] to any lawyer who is retained by a client to provide legal services. The Rules permit the responsibilities under Division 11 to be fulfilled by a lawyer's firm, including members or employees of the firm.[18]

38. There are six main requirements in the CIV rules:

    (1) Identify the "client," as defined in Rule 3-98, and record basic identification about the client upon being retained (Rule 3-100);
    (2) Verify the client's identity where there is a "financial transaction," as defined in Rule 3-98 (Rules 3-102 to 3-106);
    (3) Obtain from the client and record information about the source of money where there is a financial transaction (Rules 3-102(1)(a), 3-103(4)(b)(ii), and 3-110(1)(a)(ii));
    (4) Maintain and retain records of documents and information used in identification, verification and monitoring (Rules 3-100, 3-102, 3-103, 3-104. 3-107 and 3-110);
    (5) Withdraw if the lawyer knows or ought to know that the lawyer would be assisting in fraud or other illegal conduct (as discussed above, Rule 3-109); and
    (6) Monitor the lawyer-client professional business relationship periodically while retained in respect of a "financial transaction" (Rule 3-110).

39. Each of these is discussed in more detail below.

40. Identification, as required by Rule 3-100, is distinct from verification (required by Rule 3-102): it is required whenever a lawyer is retained to provide legal services, and requires that the lawyer obtain basic information such as the client's name, address, phone number, occupation,

[17] Rules 3-100 to 3-108 and 3-110 do not apply when a lawyer provides legal services on behalf of his or her employer, or as part of a duty counsel program sponsored by a non-profit organization or in the form of pro bono summary advice, so long as no financial transaction is involved: Rule 3-99(2). A lawyer is not required to repeat compliance with Rules 3-100 to 3-106 when another lawyer or interjurisdictional lawyer who has complied with those rules or equivalent provisions engages the lawyer to provide legal services to the client as agent, or refers a matter to lawyer for the provision of legal services (Rule 3-99(2.1)).
[18] Rule 3-99(3)

and place of work.[19] Verification is required when a lawyer is retained to provide legal services in respect of a financial transaction,[20] and then the lawyer must obtain and retain documentation to confirm that their client is who or what they say they are.

41. A "financial transaction" – the trigger for verification – is defined as "the receipt, payment or transfer of money on behalf of a client or giving instructions on behalf of a client in respect of the receipt, payment or transfer of money."[21]

42. Prior to January 1, 2020, Rule 3-102 required that the lawyer take reasonable steps to verify the clients' identity "using what the lawyer reasonably considers to be reliable, independent source documents, data or information." As of January 1, 2020, the standard for verification has changed, such that a lawyer[22] providing legal services in respect of a financial transaction must

> (a) obtain from the client and record, with the applicable date, information about the source of money, and
> (b) verify the identity of the client using documents or information described in subrule (2).[23]

43. There are now three methods of verifying individuals:

- a photo ID method, which relies on government-issued ID;
- a credit file method, utilizing a credit file in existence in Canada for at least three years; or
- a dual process method, which looks to information from two different and reliable independent sources.

44. The details of these methods are set out in Rule 3-102, as follows:

> (2) For the purposes of subrule (1), the client's identity must be verified by means of the following documents and information, provided that documents are valid, original and current and information is valid and current:
> (a) if the client is an individual
> (i) an identification document issued by the government of Canada, a province or territory or a foreign government, other than a municipal government, that
> (A) contains the individual's name and photograph, and

[19] Note that once a lawyer has obtained and recorded the information required under Rule 3-100(1), the lawyer is not required to subsequently obtain and record information about the same individual unless the lawyer has reason to believe the information, or the accuracy of it, has changed: Rule 3-100(2).
[20] Again, subject to certain exceptions, which are set out in Rule 3-101, which states that Rules 3-102 to 3-106 do not apply if, among other things, the client is a financial institution, a public body, a reporting issuer, or an individual who instructs the lawyer on behalf of one of those clients. Further details of the exemptions from the verification requirement are found in Rule 3-101.
[21] Rule 3-98(1) includes definitions of "financial transaction" and "money"
[22] A lawyer may rely on an agent for client verification in certain circumstances set out in Rule 3-104. However, a lawyer must use an agent if the client is not present in Canada and is not physically before the lawyer.
[23] Rule 3-102(1)

(B) is used in the physical presence of the client to verify that the name and photograph are those of the client,

(ii) information in the individual's credit file that is used to verify that the name, address and date of birth in the credit file are those of the individual, if that file is located in Canada and has been in existence for at least three years, or

(iii) any two of the following with respect to the individual:

(A) information from a reliable source that contains the individual's name and address that is used to verify that the name and address are of those of the individual;

(B) information from a reliable source that contains the individual's name and date of birth that is used to verify that the name and date of birth are those of the individual;

(C) information that contains the individual's name and confirms that the individual has a deposit account or a credit card or other loan amount with a financial institution that is used to verify that information;

(b) if the client is an organization such as a corporation or society that is created or registered pursuant to legislative authority, a written confirmation from a government registry as to the existence, name and address of the organization, including the names of its directors where applicable, such as

(i) a certificate of corporate status issued by a public body,

(ii) a copy obtained from a public body of a record that the organization is required to file annually under applicable legislation, or

(iii) a copy of a similar record obtained from a public body that confirms the organization's existence;

(c) if the client is an organization that is not registered in any government registry, such as a trust or partnership, a copy of the organization's constating documents, such as a trust or partnership agreement, articles of association, or any other similar record that confirms its existence as an organization.

(3) An electronic image of a document is not a document or information for the purposes of this rule.

(3.1) Despite subrule (3), an electronic image of a document that is created by and obtained directly from a registry maintained by the government of Canada, a province or a territory or a foreign government, other than a municipal government, may be treated as a document or information for the purposes of subrule (2) (b).

(4) For the purposes of subrule (2) (a) (iii)

(a) the information referred to must be from different sources, and

(b) the individual, the lawyer or an agent is not a source.

45. Verification of an individual client's identity must take place when the lawyer provides legal

services in respect of a financial transaction.[24] For organizations, verification of the client's identity must take place "promptly, and in any event, within 30 days."[25] The timing for verification of an individual instructing a lawyer on behalf of an organization, is the same as for any other individual.

46. As part of verifying an organization – a term which, as defined in Rule 3-98, extends beyond companies and includes trusts – a lawyer must obtain and record, with the applicable date, the names of all directors, take reasonable measures to confirm the information's accuracy, and record (with dates) all measures taken to confirm accuracy.[26]

47. With respect to the obligation in Rule 3-102(1)(a) to obtain information about the source of money,[27] guidance from the Law Society as to the relevant information that lawyers should obtain about the source of money includes:[28]

- the payer's full name, occupation and contact information;
- the relationship of the payer to the client (the payer may be the client);
- the date the lawyer received the money from the payer;
- the economic activity or action that generated the money (e.g. settlement funds, bank loan, savings from salary);
- the form in which the lawyer received the money (e.g. cheque, bank draft, wire transfer);
- the full name and address of all financial institutions or other entities through which the payer processed or transmitted the money to the lawyer; and any other information relevant to determining the source of money (e.g. accounting record requirements, source of wealth); and
- any other information relevant to determining the source of money.

48. Under the amendments effective as of January 1, 2020, the verification obligations are ongoing. Under Rule 3-110, a lawyer must, while retained for a financial transaction, periodically assess whether the information obtained about a client, the client's information about their activities, source of money, and the client's instructions are consistent with the retainer's purpose. Further, the lawyer must assess whether there is a risk that the lawyer may be assisting in or encouraging dishonesty, fraud, crime or illegal conduct. The frequency on which such monitoring is required depends on the circumstances.

49. A lawyer must obtain and retain a copy of all records used in identifying or verifying the identity of an individual or organization, as well as in identifying shareholders, directors, and owners, or where using an agent or monitoring matters under Rule 3-110.[29]

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[24] Rule 3-105
[25] Rule 3-106
[26] Rule 3-103
[27] "Money" is broadly defined in Rule 3-98
[28] More guidance is set out in the six FAQs on source of money on the Client ID & Verification resources webpage, found here: https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/client-id-verification/
[29] Rule 3-107

50. In the context of COVID-19, the Law Society issued a Notice to the Profession on March 17, 2020, providing guidance on virtual verification during the pandemic. Virtual verification is now permitted in the limited circumstances where the individual is in Canada and no permitted methods under the existing CIV rules are available. A lawyer who undertakes virtual verification must document efforts to verify ID under the existing rules as well as the reason why verification of ID under the existing rules is not possible. The lawyer must compare a valid and current government-issued photo ID with the client, and go on to treat the transaction as high risk, with monitoring of the relationship as high-risk.[30]

Use of trust accounts

51. Rule 3-58.1(1), which came into effect in July 2019, states that

> Except as permitted by the Act or these rules or otherwise required by law, a lawyer or law firm must not permit funds to be paid into or withdrawn from a trust account unless the funds are directly related to legal services provided by the lawyer or law firm.

52. The definition of "trust" funds in Rule 1 specifies that funds are "trust funds" only if directly related to legal services.

53. Rule 3-58.1 codifies a principle set out in LSBC v. Gurney, 2017 LSBC 15 at para. 79:

54. [T]rust accounts are to be used for the legitimate commercial purposes for which they are established, the completion of a transaction, where the lawyer plays the role of legal advisor and facilitator. They are not to be used as a convenient conduit.[31]

55. Rule 3-58.1(2) requires a lawyer or law firm to take reasonable steps "to obtain appropriate instructions and pay out funds held in a trust account as soon as practicable on completion of the legal services to which the funds relate." The trust rules are monitored by way of requirements to maintain trust account records, to submit mandatory reports including annual trust reports, and by regular audits by the Law Society, which are discussed in more detail in the summary on Trust Assurance.

Looking Forward: Proposed Amendments and Future Initiatives

56. The Law Society has a number of activities and initiatives dealing with AML-related regulation proposed or in progress as of September, 2020. These initiatives and their current status are set out here, as well as in the AML Operational Plan attached as Appendix C to the Introduction

[30] See https://www.lawsociety.bc.ca/about-us/news-and-publications/news/2020/law-society-s-covid-19-response/; https://www.lawsociety.bc.ca/Website/media/Shared/docs/bulletin/BB_2020-02-Summer.pdf#practice

[31] See LSB007259 and LSB007260; see also LSB007261, Citation re: Florence Yen and LSB007262, Citation re: Rene Daignault

to the Law Society Summary.

Clarification on fiduciary property rules

57. Rule 3-55, sometimes referred to as the "fiduciary property rule," provides:

> **3-55** (1) In addition to any other obligations required by law or equity, this rule applies to lawyers who are responsible for fiduciary property.
> (2) A lawyer must make all reasonable efforts to determine the extent of the fiduciary property for which the lawyer is responsible and must maintain a list of that fiduciary property.
> (3) A lawyer must produce on demand the following records for any period for which the lawyer is responsible for fiduciary property:
> (a) a current list of valuables, with a reasonable estimate of the value of each;
> (b) accounts and other records respecting the fiduciary property;
> (c) all invoices, bank statements, cancelled cheques or images, and other records necessary to create a full accounting of the receipt or disbursement of the fiduciary property and any capital or income associated with the fiduciary property.
> (4) The records required under subrule (3) form part of the books, records and accounts of a lawyer, and the lawyer must produce them and permit them to be copied as required under these rules.
> (5) Subrules (3) and (4) continue to apply for 10 years from the final accounting transaction or disposition of valuables.
> (6) A lawyer may deposit funds that are fiduciary property to a pooled or separate trust account, provided that the lawyer complies with the rules pertaining to trust funds with respect to the fiduciary property.

58. After Rule 3-58.1 was enacted, a concern was raised that permitting fiduciary property to be held in a trust account might complicate efforts to draw a clear line respecting the proper use of a trust account.[32] Based on this, the Law Society identified a need to clarify how fiduciary property should be handled.

59. Consultation with the legal profession on proposed amendments to the fiduciary property rule, Rule 3-55, took place in February 2019. In a report dated July 2019, the Executive Committee recommended, along with a number of other consequential amendments, that the Benchers delete Rule 3-55(6), the rule that currently permits the deposit of fiduciary property into a pooled or separate trust account. In September 2019, the Benchers approved in principle the recommendation to amend the rules, and referred the matter to the Act & Rules Committee.

60. The amendments to the Rule are currently being considered. The Executive Committee also recommended that the Law Society develop guidelines to assist lawyers in meeting their

[32] "Fiduciary property" is defined in the Rules as funds, other than trust funds, and valuables for which a lawyer is responsible in a representative capacity as a trustee, if the lawyer's appointment is derived from a solicitor-client relationship.

obligations for handling fiduciary property; guidelines have been developed, and the Law Society anticipates that they will be circulated soon.

Ongoing review and enhancement of the "no cash" rule

61. The Law Society has heard concerns that the cash transaction rules are not strong enough, and that exemptions to the rule may expose lawyers to money laundering risk. The FLSC AMLTF Working Group continues to consider issues around lawyers' receipt of cash, which may result in some future amendments.

Review and enhancement of client identification and verification rules

62. While new and enhanced CIV rules were effected on January 1, 2020, review and consideration of aspects of the CIV rules remains ongoing. Additional CIV topics under consideration by the FLSC AMLTF Working Group for future regulatory amendments include:
    - EFT definitions and exemptions;
    - Politically exposed persons and heads of international organizations;
    - Risk assessment and compliance programs;
    - Virtual currency definition;
    - Additional guidance and/or definition of source of funds;
    - Nature of documents for identity verification (authentic versus original);
    - Proposed 2019 amendments to the PCMLTFA regulations.

Review of trust account rules

63. Following the amendments to the trust account rules that prohibit the use of trust accounts where no legal services are provided, consultation is ongoing regarding incidental impacts. In May 2020, the Law Society commenced consultations with the legal profession regarding the impact of Rule 3-58.1 on lawyers who accept retainers for legal services incidental to their roles as mediators, arbitrators or parenting coordinators. Before the consultation could be considered by the Benchers, a member resolution was presented for consideration at the Law Society AGM in 2020 directing the Benchers to amend the Law Society Rules to confirm that lawyers practising as mediators, arbitrators and parenting coordinators are engaged in the practice of law and may deposit retainers into their trust account. The resolution passed. Member resolutions from an AGM are not binding on the Benchers, although there is a process set out in the LPA that addresses such resolutions where they have not been substantially implemented within a year. The resolution will have to be considered by the Benchers.