

## Law Society of British Columbia – Education of the Profession

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## Overview

1. This summary sets out various initiatives taken by the Law Society of British Columbia (the “**Law Society**”) to educate the legal profession both about the risks of money laundering arising from the provision of legal services, and the ethical standards and obligations they must meet to mitigate against those risks. Education, part of the Law Society’s mandate, is foundational to the Law Society’s anti-money laundering (“**AML**”) efforts. Lawyers and articulated students need to be aware of money laundering typologies and red flags and to understand their professional obligations in order to guard against being used as a conduit for illegal activities. The Law Society publishes resources to assist lawyers and articulated students in understanding their professional obligations with respect to AML rules and in remaining vigilant against those who would use the legal profession to further fraudulent or dishonest ends. The Law Society also offers practice support services through Law Society staff and regularly runs or participates in AML educational programs covering a wide range of AML-related topics.
2. The Law Society generally communicates its educational initiatives to the legal profession through broadcast emails (E-Briefs, Notices to the Profession, and the Benchers’ Bulletin), Twitter and through its website.
3. BC practising lawyers must complete a minimum of 12 hours of accredited continuing professional development (“CPD”) within a calendar year. At least two of the 12 hours must pertain to any combination of professional responsibility and practice management, such as AML obligations. Lawyers can seek CPD credit for their participation in eligible AML programs offered by a wide range of providers.
4. The Law Society has actively educated its staff on money laundering issues through a combination of internal training, attendance at conferences and education programs, and formal training and certification. These internal educational initiatives are addressed in more detail in the summaries dealing with Investigations and Discipline and Trust Assurance.

## Educational Resources for Lawyers

### Law Society Website Resources

5. The Law Society’s website provides an accessible platform through which lawyers, articulated students and the public may obtain information. The website includes pages dedicated to the Law Society’s AML initiatives and associated resources. Many of the resources described in detail below, including the Benchers’ Bulletin and Discipline Advisories, are hosted on the website.

6. The “Our Initiatives” webpage links readers to an “Anti-Money Laundering” section. The “Anti-Money Laundering” webpage grounds the Law Society’s AML measures in the fact that “[m]oney laundering is not a victimless crime; it enables criminal activity in all walks of life and affects all Canadians.”<sup>1</sup> The page also links readers to webpages on AML measures in BC, the Law Society’s participation in the Cullen Commission, client identification and verification, the Trust Assurance Program, and guidance for the profession. Each of these webpages, in turn, links to resources aimed at assisting the profession in understanding the Law Society’s AML initiatives, as well as their own AML professional obligations.
7. For example, the “Client ID & Verification” resources webpage<sup>2</sup> includes links to free AML webinars, articles with information on typologies, red flags, risk advisories and rule compliance, a client identification and verification (“CIV”) checklist, a sample agreement with an agent for verification of a client’s identity, risk assessment case studies with a red flag quick reference guide, and a “Frequently Asked Questions” section (“FAQs”). The FAQs include information on such topics as obtaining information about the source of money in relation to a financial transaction, using an agent to verify a client’s identity, monitoring the professional relationship with a client, and referral of a client by another lawyer.

#### *Benchers’ Bulletins*

8. The Benchers’ Bulletin (“**Bulletin**”) is a newsletter the Law Society publishes to update lawyers, articled students, and the public on topics including policy and regulatory decisions of the Benchers, committee and task force work, and Law Society programs and activities. BC lawyers are responsible for reading the Bulletin to ensure that they are aware of current standards, policies and guidelines. Over the years, the Bulletin has featured numerous articles aimed at educating the profession on the Law Society’s AML efforts. Additionally, the Bulletin includes a section on the regulation of the profession, which sets out a summary of disciplinary decisions and anonymized summaries of conduct reviews. These disciplinary summaries serve as a general deterrence and are intended to educate the profession about the expected standards of conduct and encourage compliance. The summaries have specifically addressed AML issues including breaches of the CIV and no-cash rules and misuse of lawyers’ trust accounts.
9. Examples of the Bulletin dealing with AML include an article in a winter 2002 Bulletin where Practice Advisor Felicia S. Folk reminded lawyers “that there are sophisticated criminals purporting to be legitimate clients, but who in reality are looking for ways to launder money.”<sup>3</sup>

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<sup>1</sup> The Law Society of British Columbia, “Anti-Money Laundering” (2020): <https://www.lawsociety.bc.ca/our-initiatives/anti-money-laundering/>.

<sup>2</sup> The Law Society of British Columbia, “Client ID & Verification” (2020): <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/your-clients/client-id-verification/>

<sup>3</sup> LSB007927

The article was published in the midst of the Law Society and Federation of Law Societies' constitutional challenge to the validity of certain obligations on the profession prescribed in the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000, c. 17 (“*PCMLTFA*”). Folk advised that lawyers in the province would remain exempt from “suspicious transaction” and “large cash transaction” reporting requirements at least until the decision of the matter. Nevertheless, she reminded members of the profession:

If you receive a request from a client for services that seem to mean that you are being retained to be the client's banker, or if you cannot identify the legal services you are being retained to carry out, be vigilant to ensure that no person uses your trust account to deal with the proceeds of crime. Remember that a client who wants to bring you cash because the client has no bank account can instead purchase and then bring you a money order or bank draft. Please call the Law Society if you would like advice on how to deal with ambiguous requests for your services.

Folk's article provided guidance to the profession regarding how to balance the important goal of AML efforts with constitutionally-enshrined obligations of confidentiality flowing from a lawyer to a client.

10. Other examples include an article in 2005 where the Bulletin carried information about the new no-cash rule, setting out the genesis of the rule and explaining its application,<sup>4</sup> and a number of “Practice Watch” articles in 2008, written by Practice Advisor Barbara Buchanan, QC, which set out cautions on the use of cash, new scams, and assistance with the new client identification and verification rules.<sup>5</sup>
11. More recently, Practice Advisor Barbara Buchanan, QC has published a number of articles on AML-related topics in the Bulletin: an article in the Fall 2019 Bulletin detailed the amendments to the Rules designed to enhance AML measures, which subsequently came into force on January 1, 2020;<sup>6</sup> articles in the Winter 2019 and Spring 2020 Bulletins provided a more detailed discussion of the CIV rule that came into effect on January 1, 2020;<sup>7</sup> and an article in the Summer 2020 Bulletin providing guidance with respect to the application of the CIV Rules during COVID-19.<sup>8</sup>

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<sup>4</sup> LSB010572, LSB010571

<sup>5</sup> LSB010590, LSB010593, LSB010594

<sup>6</sup> LSB007946

<sup>7</sup> LSB007947 Barbara Buchanan, QC, “Know your client – addressing questions and risks”, *Benchers' Bulletin* (Spring 2020): <https://www.lawsociety.bc.ca/about-us/news-and-publications/benchers-bulletin/benchers-bulletin-spring-2020/>

<sup>8</sup> Barbara Buchanan, QC, “Knowing your client – Guidance and rules during COVID-19”, *Benchers' Bulletin* (Summer 2020): [https://www.lawsociety.bc.ca/getattachment/6ee97c32-a74c-4504-bf76-1e281e2c0c01/BB\\_2020-02-Summer.pdf.aspx](https://www.lawsociety.bc.ca/getattachment/6ee97c32-a74c-4504-bf76-1e281e2c0c01/BB_2020-02-Summer.pdf.aspx)

12. The aforementioned four Bulletin articles by Buchanan direct readers to contact the author for questions regarding client identification and verification, or a Law Society auditor for trust account and general account questions.

#### *Discipline Advisories*

13. Discipline Advisories are published by the Law Society to caution the profession about conduct that may lead to discipline. Prepared by the Professional Regulation department, the Advisories are a part of a pro-active regulatory approach intended to deter future misconduct. The Advisories are brought to lawyers' attention through broadcast emails and are posted on the Law Society's website. Several Advisories have been published on the profession's AML obligations, including Advisories dealing with the no-cash rule, CIV, the function of lawyers as gatekeepers to their trust accounts, the risk of illegal activity associated with private lending, and securities fraud.

#### *Practice Support – Practice Advisors*

14. The Law Society offers support resources to lawyers, and provides information regarding practice management and professional obligations. One of the central means through which the Law Society supports lawyers is through the practice advice program. Practice advisors are available to provide advice to lawyers and articulated students upon request. All communication between a practice advisor, lawyers and articulated students is strictly confidential, except in instances of trust fund shortages.
15. Practice advisors provide advice on the Rules, including those governing client identification and verification; the BC Code, practice management; ethics; relationships between clients and lawyers or among lawyers; and scam and fraud alerts. Practice advisors do not provide formal oral or written legal opinions. The advice is not binding on the lawyer, the Law Society, or courts. The practice advisors are available to assist lawyers in assessing their own practice management and improving procedures.
16. A "Practice Advisors – Frequently Asked Questions" page on the Law Society website addresses questions that practice advisors frequently receive.<sup>9</sup> These include questions that engage the Law Society's AML initiatives, including "[w]here can I find information on client identification and verification?" and "[w]here can I find information on dealing with client files and records retention?" The webpage directs lawyers to Rules 3-98 to 3-110, and to online resources, to learn about client identification and verification. It direct lawyers to articles on client files to learn about records management.

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<sup>9</sup> The Law Society of British Columbia, "Practice Advisors – Frequently Asked Questions" (2020): <https://www.lawsociety.bc.ca/support-and-resources-for-lawyers/practice-advisors-frequently-asked-questions/>

Practice Support – Trust Auditors

17. The Trust Assurance Department provides information and educational resources to lawyers regarding their trust accounting obligations. This is conducted through publication of written resource materials, delivery of educational programs, and responding to *ad hoc* questions and requests for assistance from lawyers and their support staff. Please refer to the Trust Assurance Program Summary for further information.

AML Programs

18. The Law Society has been actively involved in presenting programs aimed at educating BC lawyers and law firm support staff about AML measures. These programs frequently include practical exercises and fact patterns designed to assist lawyers in understanding and applying the Rules.<sup>10</sup>

19. Recent examples of educational programs with AML-related content include:

- In September 2020, Barbara Buchanan, QC, Practice Advisor, presented “AML Measures: Lawyers and Law Societies”, at the annual Money Laundering in Canada Conference hosted by ABC Solutions (About Business Crime Solutions Inc.)<sup>11</sup>
- In July 2020, Barbara Buchanan QC, Practice Advisor, and Tina Kaminski, Law Society Audit Team Leader, presented a program titled “Anti-Money Laundering Measures – The Law Society of BC” to help lawyers comply with the Law Society’s AML rules.<sup>12</sup> The program includes information on money laundering, cash, client identification and verification, red flags, risk management and professional responsibility obligations. The two-hour program, eligible for two hours of CPD credit, continues to be available 24/7 on YouTube and according to YouTube it had 2,248 views from July 10, 2020 to October 22, 2020.
- The Continuing Legal Education Society of British Columbia (“CLEBC”) hosted Practice Advisor Barbara Buchanan, QC to present the 2020 amendments to client identification and verification rules. A recording of the presentation, and the accompanying slideshow, is now available publicly online.<sup>13</sup>

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<sup>10</sup> E.g. LSB00809 and LSB008028

<sup>11</sup> Money Laundering in Canada Conference, September 21-23, 2020, Ottawa  
<https://www.moneylaundering.ca/public/service/servicemlincanada.php>

<sup>12</sup> The Law Society of BC, “Anti-Money Laundering Measures – The Law Society of BC (July 2020)  
[https://youtu.be/d5yO\\_iI58BM](https://youtu.be/d5yO_iI58BM)

<sup>13</sup> Continuing Legal Education Society of British Columbia, “Complimentary Webinar – CLE-TV: Anti-Money Laundering 2019” (November 27, 2019): [cle.bc.ca/anti-money-laundering-2019/](http://cle.bc.ca/anti-money-laundering-2019/)

20. On a regular basis, the Law Society offers trust accounting courses, with course objectives including overviewing the duties and professional obligations of lawyers and staff in handling client trust funds and cash transactions, including anti-money laundering content.
21. For example, in a course titled “Trust Accounting Course,” presented by Law Society trust auditors, course content includes coverage on the nature of money laundering and why trust accounts may be vulnerable.<sup>14</sup> The course materials explain that money launderers may attempt to involve a lawyer to give an appearance of legitimacy to their transactions—since lawyers set up companies and trusts and facilitate real estate transactions regularly—and may seek to shelter their transaction behind solicitor client privilege. The materials then discuss the Law Society’s AML initiatives, Rules relating to AML, and relevant conduct reviews and discipline digests.
22. In 2020, the previously in-person Trust Accounting Course was updated to a three-part online webinar.<sup>15</sup> The second of the three webinars focuses on combatting money laundering, and consists of the online “Anti-Money Laundering Measures – The Law Society of BC” program described above.

### **Educational Resources for Students**

23. One of the Law Society’s obligations under the *Legal Profession Act*, S.B.C. 1998, c. 9 is to ensure that each person entering the legal profession in BC is of good character and is fit to become a barrister and solicitor of the Supreme Court. The Law Society governs admission into the profession through an Admission Program, which includes the Professional Legal Training Course (“**PLTC**”). The successful completion of PLTC is a requirement for becoming a lawyer in BC. PLTC is a full-time, 10-week course offered three times a year in Vancouver, and once a year in each Victoria and Kamloops.
24. During the course of PLTC, students complete assessments and, at the end of the course, write two Bar exams. In PLTC readings and classwork, students are exposed to core areas of practice in BC, namely: business (commercial and company), real estate, wills, civil procedure, criminal procedure, family, and professionalism (ethics and practice management, including an introduction to law office accounting systems and trust accounting).
25. The Law Society added an AML education component to PLTC in 2004.<sup>16</sup> PLTC’s engagement with AML education includes in-class activities geared toward instilling a

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<sup>14</sup> LSB007990

<sup>15</sup> A description for this course, titled “Trust Accounting Course #2 (Basics of Anti-Money Laundering)” is provided in a Briefing Note prepared for the Cullen Commission dated October 7, 2020.

<sup>16</sup> The Law Society of British Columbia, “Anti-money laundering measures in BC” (2020): <https://www.lawsociety.bc.ca/our-initiatives/anti-money-laundering/anti-money-laundering-measures-in-bc/>

practical understanding of lawyers' AML obligations, as well as coverage of the Law Society's AML measures in the practice materials on which students are ultimately examined.

26. As the rules furthering the Law Society's AML objectives have progressed, so too has the coverage of lawyers' duties in that regard in the PLTC materials. In the lead-up to the January 1, 2020 amendments to the Rules, the practice materials on professionalism and practice management (the "**Practice Management Materials**") were updated to provide detailed coverage of the changes.<sup>17</sup> Section §6.08 of the Practice Management Materials covers "rules aimed at reducing the risk that money laundering will take place through the use of a lawyer," proceeds of crime legislation, trust accounts, and cash transactions.
27. The Practice Management Materials, which are examinable, introduce the amendments to the Rules, including:
- Rule 3-58.1, which provides that funds paid in or out of a trust account must be directly related to legal services;
  - Rule 3-59(3), which provides that a lawyer must not receive or accept cash in an aggregate amount greater than \$7,500 in respect of any one client matter or transaction (with some exceptions); and
  - Rules 3-98 to 3-109, which provides for lawyers' client identification and verification obligations.

Coverage of these rules is followed by excerpts from Benchers' Bulletins pertaining to cash transactions.

28. Section §6.08 of the Practice Management Materials also includes a section on *Criminal Code* provisions relating to the proceeds of crime, and warns students to be wary of clients who seem to be seeking services more akin to banking services than legal services. The practice materials give students guidance regarding steps to take upon discovering that funds held in trust are the proceeds of crime.
29. While the practice materials covering professionalism and practice management provide the most comprehensive discussion of lawyers' obligations to adhere to AML rules, the PLTC course materials also cover AML initiatives in other subjects where appropriate.
30. For example, the practice materials on real estate law (the "**Real Estate Materials**") advise students that "[t]he [*Code of Professional Conduct for British Columbia*] prohibits lawyers

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<sup>17</sup> LSB007881

from assisting or encouraging any dishonesty, crime or fraud.”<sup>18</sup> The Real Estate Materials excerpt portions of the *Code* requiring lawyers to be alert and to avoid unwittingly becoming involved with a client engaged in criminal activities including money laundering.

31. Additionally, the practice materials covering professionalism and ethics (the “**Ethics Materials**”) include a significant discussion of AML and anti-terrorist financing.<sup>19</sup> The Ethics Materials cite the *Code*’s requirement that a lawyer “not engage in any activity that a lawyer knows or ought to know assists in or encourages any dishonesty, crime or fraud.” It then describes and discusses AML measures in the legal profession, including client identification and verification rules, cash transaction rules, and trust accounting rules.
32. The February 2020 updates to the PLTC materials included significant AML-related updates.<sup>20</sup> Most significantly, the Practice Management: Professionalism materials added a new chapter specifically focused on AML measures.<sup>21</sup> That chapter consolidates and builds upon AML-related information from prior versions of the PLTC material and includes summaries of key anti-money laundering rules about cash transactions, trust accounts, CIV and other recent changes to the rules, as well as copies of pertinent Benchers’ Bulletins. Content throughout the Practice Management materials was updated to reflect the rules that came into effect on January 1, 2020. Additionally, the Practice Management materials now include a copy of the Trust Accounting Handbook.
33. The May 2020 PLTC materials included updates to the chapter on AML measures, with a new introduction, a recent Benchers’ Bulletin, and references to resources produced by the Federation of Law Societies of Canada.<sup>22</sup>

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<sup>18</sup> LSB007887

<sup>19</sup> LSB007890

<sup>20</sup> LSB020658 to LSB020668

<sup>21</sup> LSB020665

<sup>22</sup> LSB020673